

78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100
 101 102 103 104 105 106 107 108 109 110 111 112 113 114 115 116 117 118 119 120 121 122 123
 124 125 126 127 128 129 130 131 132 133 134 135 136 137 138 139 140 141 142 143 144 145 146
 147 148 149 150 151 152 153 154 155 156 157 158 159 160 161 162 163 164 165 166 167 168 169
 170 171 172 173 174 175 176 177 178 179 180 181 182 183 184 185 186 187 188 189 190 191 192
 193 194 195 196 197 198 199 200 201 202 203 204 205 206 207 208 209 210 211 212 213 214 215
 216 217 218 219 220 221 222 223 224 225 226 227 228 229 230 231 232 233 234 235 236 237 238
 239 240 241 242 243 244 245 246 247 248 249 250 251 252 253 254 255 256 257 258 259 260 261
 262 263 264 265 266 267 268 269 270 271 272 273 274 275 276 277 278 279 280 281 282 283 284
 285 286 287 288 289 290 291 292 293 294 295 296 297 298 299 300 301 302 303 304 305 306 307
 308 309 310 311 312 313 314 315 316 317 318 319 320 321 322 323 324 325 326 327 328 329 330
 331 332 333 334 335 336 337 338 339 340 341 342 343 344 345 346 347 348 349 350 351 352 353
 354 355 356 357 358 359 360 361 362 363 364 365 366 367 368 369 370 371 372 373 374 375 376
 377 378 379 380 381 382 383 384 385 386 387 388 389 390 391 392 393 394 395 396 397 398 399
 400 401 402 403 404 405 406 407 408 409 410 411 412 413 414 415 416 417 418 419 420 421 422
 423 424 425 426 427 428 429 430 431 432 433 434 435 436 437 438 439 440 441 442 443 444 445
 446 447 448 449 450 451 452 453 454 455 456 457 458 459 460 461 462 463 464 465 466 467 468
 469 470 471 472 473 474 475 476 477 478 479 480 481 482 483 484 485 486 487 488 489 490 491
 492 493 494 495 496 497 498 499 500 501 502 503 504 505 506 507 508 509 510 511 512 513 514
 515 516 517 518 519 520 521 522 523 524 525 526 527 528 529 530 531 532 533 534 535 536 537
 538 539 540 541 542 543 544 545 546 547 548 549 550 551 552 553 554 555 556 557 558 559 560
 561 562 563 564 565 566 567 568 569 570 571 572 573 574 575 576 577 578 579 580 581 582 583
 584 585 586 587 588 589 590 591 592 593 594 595 596 597 598 599 600 601 602 603 604 605 606
 607 608 609 610 611 612 613 614 615 616 617 618 619 620 621 622 623 624 625 626 627 628 629
 630 631 632 633 634 635 636 637 638 639 640 641 642 643 644 645 646 647 648 649 650 651 652
 653 654 655 656 657 658 659 660 661 662 663 664 665 666 667 668 669 670 671 672 673 674 675
 676 677 678 679 680 681 682 683 684 685 686 687 688 689 690 691 692 693 694 695 696 697 698
 699 700 701 702 703 704 705 706 707 708 709 710 711 712 713 714 715 716 717 718 719 720 721
 722 723 724 725 726 727 728 729 730 731 732 733 734 735 736 737 738 739 740 741 742 743 744
 745 746 747 748 749 750 751 752 753 754 755 756 757 758 759 760 761 762 763 764 765 766 767
 768 769 770 771 772 773 774 775 776 777 778 779 780 781 782 783 784 785 786 787 788 789 790
 791 792 793 794 795 796 797 798 799 800 801 802 803 804 805 806 807 808 809 810 811 812 813
 814 815 816 817 818 819 820 821 822 823 824 825 826 827 828 829 830 831 832 833 834 835 836
 837 838 839 840 841 842 843 844 845 846 847 848 849 850 851 852 853 854 855 856 857 858 859
 860 861 862 863 864 865 866 867 868 869 870 871 872 873 874 875 876 877 878 879 880 881 882
 883 884 885 886 887 888 889 890 891 892 893 894 895 896 897 898 899 900 901 902 903 904 905
 906 907 908 909 910 911 912 913 914 915 916 917 918 919 920 921 922 923 924 925 926 927 928
 929 930 931 932 933 934 935 936 937 938 939 940 941 942 943 944 945 946 947 948 949 950 951
 952 953 954 955 956 957 958 959 960 961 962 963 964 965 966 967 968 969 970 971 972 973 974
 975 976 977 978 979 980 981 982 983 984 985 986 987 988 989 990 991 992 993 994 995 996 997
 998 999 1000 1001 1002 1003 1004 1005 1006 1007 1008 1009 1010 1011 1012 1013 1014 1015 1016 1017 1018 1019
 1020 1021 1022 1023 1024 1025 1026 1027 1028 1029 1030 1031 1032 1033 1034 1035 1036 1037 1038 1039 1040 1041
 1042 1043 1044 1045 1046 1047 1048 1049 1050 10

10
 9
 8
 7
 6
 5
 4
 3
 2
 1
 0
 1
 2
 3
 4
 5
 6
 7
 8
 9
 10

1927 SUPPLEMENT
TO
THE REVISED CODES
OF
MONTANA OF 1921
ANNOTATED

SHOWING AMENDMENTS TO THE CONSTITUTION OF MONTANA SINCE THE
PUBLICATION OF THE REVISED CODES OF MONTANA OF 1921, AND
ALL STATUTES OF A GENERAL NATURE ENACTED AT THE
SESSIONS OF 1923, 1925, AND 1927, ANNOTATED TO THE
DECISIONS IN VOLUMES 59 TO 77, INCLUSIVE, MON-
TANA REPORTS, TOGETHER WITH REFERENCES
TO NOTES IN AMERICAN LAW REPORTS,
CROSS-REFERENCES, INDEX, ETC.

BY
I. W. CHOATE
CODE COMMISSIONER AND COMPILER OF REVISED CODES OF
MONTANA OF 1921

SAN FRANCISCO
BANCROFT-WHITNEY COMPANY
1928

7

1927 SUPPLEMENT
TO
THE REVISED CODES
OF
MONTANA OF 1921
ANNOTATED

COPYRIGHT, 1928

SHOWING AMENDMENTS TO THE CONSTITUTION OF MONTANA SINCE THE
PUBLICATION OF THE FIRST EDITION OF THE REVISED CODES OF 1921, AND
AND STATUTES OR A GENERAL NATURE EXTENDING TO THE
PERIODS OF 1922, 1923, AND 1924, ANNOTATED TO THE
DECISIONS IN VOLUMES 29 TO 37 INCLUSIVE, MAY
DATA REPORTS TOGETHER WITH REFERENCES
TO NOTES IN AMERICAN LAW REPORTS,
CROSS REFERENCES, INDEX, ETC.

BY

I. W. CHASE

Corr. Commissioner and Compiler of Revised Codes of
Montana of 1921

SAN FRANCISCO

SAN FRANCISCO

THE FILMER BROTHERS ELECTROTYPE COMPANY
TYPOGRAPHERS AND STEREOTYPERS

PREFACE.

This Supplement has been prepared by I. W. Choate, Esq., of the Helena Montana bar, the compiler of the Revised Codes of Montana of 1921, which is the official codification of the laws of that state.

The work follows the general plan and arrangement of the 1921 Codes, preserving the same division into Parts and Chapters with the use of the decimal system for the numbering of new sections.

The Supplement contains all the permanent legislation found in the Session Acts of 1923, 1925 and 1927 now in force and effect.

It is fully annotated to the decisions of the Supreme Court of Montana as well as the Federal Reports construing or citing the sections of the Revised Codes of 1921 and subsequent session laws.

The annotations cover Volumes 59 to 77, inclusive, of the Montana Reports and continue to date those in the 1921 Code.

The history of each section is indicated with the use of the same abbreviations as in the 1921 Code. Also following the index, is a table of comparative sections from which the location in the Supplement of any session act can readily be found.

March, 1928.

TABLE OF CONTENTS.

CONSTITUTION OF THE STATE OF MONTANA.

- Art. III. Declaration of Rights.
- Art. IV. Distribution of Powers.
- Art. V. Legislative Department.
- Art. VI. Apportionment and Representation.
- Art. VII. Executive Department.
- Art. VIII. Judicial Department.
- Art. IX. Rights of Suffrage and Qualifications to Hold Office.
- Art. X. State Institutions and Public Buildings.
- Art. XI. Education.
- Art. XII. Revenue and Taxation.
- Art. XIV. Military Affairs.
- Art. XV. Corporations Other Than Municipal.
- Art. XVI. Municipal Corporations and Officers.
- Art. XIX. Miscellaneous Subjects and Future Amendments.
- Art. XX. Schedule.
- Art. XXI. State Permanent Revenue and School Funds.

POLITICAL CODE.

Act to Establish a Political Code.

- § 3. Laws, when retroactive.
- 4. Codes, how construed.
- 8. Actions, etc., not affected by this code.
- 15. Words and phrases, how construed.
- 17. Effect of codes on prior laws.

PART I. THE SOVEREIGNTY OF THE STATE AND THE POLITICAL RIGHTS AND DUTIES OF PERSONS SUBJECT TO ITS JURISDICTION.

CHAPTER 3. GENERAL RIGHTS OF THE STATE OVER PROPERTY.

- 30. By right of eminent domain.

CHAPTER 4. PERSONS COMPOSING THE PEOPLE OF THE STATE

- 33. Residence, rules for determining.

PART III. THE GOVERNMENT OF THE STATE.

CHAPTER 3. THE POWERS, DUTIES AND COMPENSATION OF MEMBERS, OFFICERS AND EMPLOYEES OF THE LEGISLATIVE ASSEMBLY.

- *78.1. Inventory of legislative property.
- *78.2. Custody of property—Appraisal and sale.
- *78.3. Duty of purchasing agent.
- *78.4. Penalty for removing property.

CHAPTER 4. WITNESSES BEFORE THE LEGISLATIVE ASSEMBLY.

- 81. Contempt.

CHAPTER 5. STATUTES, THEIR ENACTMENT AND OPERATION.

- 93. Effect of amendment.
- 95. Repeal of statutes.
- 98. Amendatory act, when void.

CHAPTER 6. INITIATIVE AND REFERENDUM.

- § 100. Form of petition for initiative.
- *103. Certification and numbering of measures.
- 104. Manner of voting—Ballot.
- *105. Printing and distribution of measures.

CHAPTER 7. THE EXECUTIVE DEPARTMENT, CLASSIFICATION, DESIGNATION, ELECTION AND APPOINTMENT OF EXECUTIVE OFFICERS AND DEPUTIES.

- 113. State board of equalization.
- 123. Consolidated clerkships.
- *123.1. Consolidation of clerkships.

CHAPTER 10. THE SECRETARY OF STATE.

- 145. Fees of secretary of state.
- *145.1. Fees for filing articles of foreign corporations.
- *145.2. Report concerning capital stock.
- *145.3. Computation of authorized capital stock employed in state.
- *145.4. Additional fee.
- *145.5. Stock of no par value, how estimated.
- *145.6. Penalty.
- *145.7. Application act.

CHAPTER 11. THE STATE AUDITOR AND COMMISSIONER OF INSURANCE.

- 151. General duties.
- *162. Auditor as commissioner of insurance—Appointment of deputy.

CHAPTER 12. THE STATE TREASURER.

- *180. Registry and interest on state warrants.
- *182. Depositories of state funds—Securities—Interest—Reserve.
- 183. Posting list of warrants.
- 187. Quarterly report to governor.
- *187.1. Treasurer to keep account of funds—Publication of quarterly report.
- *187.2. Advertisement for bids.
- *187.3. Approval and letting of contract.
- *198.1. Designation of controlling fund accounts.
- *198.2. What shall be recorded therein.
- *198.3. State trust and agency fund account.
- *198.4. Federal trust and agency fund.
- *198.5. Federal land grant permanent fund account.
- *198.6. Federal land grant income fund.
- *198.7. Interest bearing invested funds account.
- *198.8. Allocation of new funds.
- *198.9. Designation fiscal agency for payment of bonds.
- *198.10. Bond required.
- *198.11. Remittance of redemption money.
- *198.12. Cancellation of bonds or coupons.
- *198.13. Notice of place of payment.
- *198.14. Responsibility for funds.
- *198.15. Liability for failure to comply with act.
- *198.16. Change of agency.

CHAPTER 13. THE ATTORNEY GENERAL.

- *199.1. Attorney general to prescribe forms.
- *206.1. Transfer law enforcement fund.
- *206.2. Fund, how used.

CHAPTER 14. THE STATE LAND AGENT.

- 207. Reference to sections relative to state land agent.

CHAPTER 16. THE STATE EXAMINER.

- *210. Duties of state examiner.
- *210.1. Examiner's report to be entered in minutes.
- *230.1. Validation of certain poor fund warrants.

CHAPTER 18. THE BOARD OF EXAMINERS—STATE PRINTING AND SUPPLIES—CONTRACTS FOR BUILDINGS AND IMPROVEMENTS.

- § 232. Board, how composed.
- 233. Meetings and officers.
- 238. Claims for which appropriations have been made.
- 239. Approval and warrant.
- 244. Proof and examination of such claims.
- 250. Board may prevent payment of auditor's warrants.
- *259.1. Contracts—Requirements—Advertising.
- *259.2. Contents of advertisements.
- *259.3. Bids.
- *259.4. Awarding contracts.
- *259.5. Cost plus.
- *259.6. Proviso.
- 268. Board may employ clerical help for state officers.
- 269. Contracts in excess of appropriation prohibited.
- *270. Investment of special funds in general fund warrants.

CHAPTER 19. THE STATE PURCHASING DEPARTMENT.

- 285. Duties of state purchasing agent—Contingent funds for state departments.
- *287. Authority to purchase.
- *293.1. Property returns by state officials.
- *293.2. Inventory—Contents and preparation.
- *293.3. Bids for supplies.
- *293.4. Power to sell state property—Disposal of money.
- *293.5. Legislative and other departmental supplies, how purchased.
- *293.6. Purchase of state printing and reports.
- *293.7. State officers to estimate needed supplies—Regulation of bids.
- *293.8. Period of contract.
- *293.9. Fresh fruits, etc., how purchased.
- *293.10. Favoritism forbidden.
- *293.11. Record of bids—Contracts in name of state.
- *293.12. Transfer of contracts forbidden—Collusion—State officers not to be interested.
- *293.13. Inspection of warehouses.

CHAPTER 20. THE BUDGET SYSTEM.

- 294. Act to be cited, how.
- 297. Blank form for requests.
- 298. Budget and supplementary appropriation bills.
- 299. Submission of budget to legislative assembly—Legislative action.

CHAPTER 22A. ERECTION OF MONUMENT ON CAPITOL GROUNDS.

- *319.1. Monument—Erection on capitol grounds.

CHAPTER 23. CUSTODIAN OF RECORDS OF GRAND ARMY OF REPUBLIC.

- *320. Custodian of records of Grand Army of Republic.
- *321. Room for storing and safekeeping of records.
- *322. Purposes for which room shall be used.
- *323. Records to become property of state.
- *324. Expenses, how paid.

CHAPTER 26. THE STATE BOARD OF HAIL INSURANCE.

- *350. Hail insurance board—Creation—Powers and duties—Farmers to file application.
- *350A. Limitation on insurance per acre.
- *350B. Tax delinquencies, when a bar—Crop lien.
- *351. Tax levy—Limitation on amount—Lien—Board may establish rates.
- *352. Levy to provide what—Reserve fund.
- *354. County treasurer to collect levies—Board to assist—Release of liens.
- *354A. Failure to pay insurance—Levy on grain.
- *355. Duty of state treasurer—Hail insurance funds.
- *358. Report of losses.
- *360. Appeals—Appointment of appraisers—Judgment.
- *361. Payment of losses—Borrowing money—Interest on warrants.
- *363. Compensation of chairman—Duty of other officers.
- *363.1. Benefits exempt from execution.

CHAPTER 31. THE REPORTERS OF THE DECISIONS OF THE SUPREME COURT.

- § *380. Reports, how published.
- *381. Publisher's contract—Proposals for printing.
- *383. Delivery by publisher—Maintenance stock—Bond.

CHAPTER 32. NOTARIES PUBLIC.

- 388. Powers and duties.

CHAPTER 35. DISQUALIFICATIONS AND RESTRICTIONS.

- *412. County officers not to act as deputy.

CHAPTER 36. POWERS OF DEPUTIES.

- 418. Powers of deputies.

CHAPTER 37. APPOINTMENT, NOMINATIONS AND OATH OF OFFICE.

- 420. Deputies and subordinate officers.
- 421. Number of deputies.
- 426. Commissions by the governor.
- 430. Oath, form of.
- 432. Time of filing oath.

CHAPTER 38. COMPENSATION OF STATE OFFICERS AND EMPLOYEES.

- 437. Salaries of board of examiners and consolidated boards.
- *439. Salaries of janitors and other capitol employees.
- *440.1. Salary of supreme court stenographer.
- *440.2. Salary of deputy secretary of state.
- *440.3. Salary of deputy state treasurer.
- *440.4. Salary of deputy state auditor.
- *440.5. Salary of deputy insurance commissioner.
- *443. Limitation of expenses of public officers' attendance at conventions.

CHAPTER 39. PROHIBITIONS AND GENERAL PROVISIONS APPLICABLE TO PUBLIC OFFICERS.

- 451. Title contested, salary must not be paid.
- *458.1. State officers to file itemized statement expenses.
- *458.2. Form of statement.
- *458.3. Files.
- *458.4. Investigation of reports.
- *458.5. Separate reports.
- *458.6. Construction of act.
- *463.1. Sinking fund—Duty of officers to provide.
- *463.2. Penalty for wrongful appropriation.
- *463.3. Duty of county attorney.

CHAPTER 40. OFFICIAL BONDS.

- 471. Approval of bonds of county and township officers.
- 474. Bond not to be filed before approval.
- 475. Conditions, signatures, and sureties.
- 482. Suit on bonds.
- 484. Defects not to affect liability.
- 503. Application of chapter to what bonds.

CHAPTER 41. RESIGNATIONS AND VACANCIES.

- 511. Vacancies, how they occur.

CHAPTER 45. PUBLICATION OF QUESTIONS SUBMITTED TO POPULAR VOTE.

- *537.1. Manner of publishing constitutional amendments.

CHAPTER 46. QUALIFICATIONS AND PRIVILEGES OF ELECTORS.

- *540.1. Qualification of voters on creation of public indebtedness.
- *540.2. Preparation and posting lists of voters.
- *540.3. Validation of certain county bond issues.

CHAPTER 47. ELECTION PRECINCTS.

- § 545. Establishment of election precincts.
- 551. Proceedings where place not designated, etc.
- 552. Voting precinct, establishment at Indian agency.

CHAPTER 48. REGISTRATION OF ELECTORS.

- 574. Residence, rules for determining.
- 576. Voter to sign precinct register books.
- 582. "Election" defined.

CHAPTER 49. JUDGES AND CLERKS OF ELECTION.

- *587. Judges of election—How appointed.
- *588. Number of judges to be appointed.

CHAPTER 51. NOMINATION OF CANDIDATES FOR SPECIAL ELECTIONS BY CONVENTION OR PRIMARY MEETING OR BY ELECTORS.

- 612. Convention or primary meeting defined.
- 615. Certificates of nomination otherwise made.
- *618. When certificate to be filed.
- *619. Certification names of nominees.
- *620. Declining of nominations.

CHAPTER 52. PARTY NOMINATIONS BY DIRECT VOTE—THE DIRECT PRIMARY.

- 631. Construction of law.
- *632. Date of primaries.
- *639. Political party nominations made exclusively as herein provided.
- *640. Petitions for nomination to be filed.
- *641. Form of petition for nomination.
- 642. Percentage of electors required on petition.
- 643. Qualification of petitioners.
- *644. Time for filing petitions for nominations.
- *645. Register of candidates.
- *648. Arrangement and certification of names of candidates.
- *649. Arrangement of ballots and notice.
- *651. Ballots, how arranged, printed and voted.
- *652. Official and sample ballots—Preparation and number.
- *662. County and city central committeemen, how elected.
- *663. Selection of national committeeman and committeewoman.
- 670. General laws applicable to this enactment.

CHAPTER 53. PRESIDENTIAL PREFERENCE OF PRIMARY.

- 671-676. Relating to the holding of a Presidential preference primary election.
- 673. Election of delegates to national convention and nomination of Presidential electors, how made.
- 675. Campaign books, how prepared and allotted.
- 676. Space in campaign books, how allotted and paid for.

CHAPTER 53A. NOMINATION OF PRESIDENTIAL ELECTORS AND DELEGATES TO NATIONAL CONVENTIONS.

- *673.1. Political party defined.
- *673.2. Nomination of Presidential electors and delegates to national conventions.
- *673.3. Holding of county convention.
- *673.4. Presiding officer—Seating of members.
- *673.5. Organization of convention—Election of delegates.
- *673.6. State convention, when held.
- *673.7. State convention, how conducted.
- *673.8. Expenses—Mileage of delegates.

CHAPTER 54. BALLOTS, PREPARATION AND FORM.

- 687. Number of ballots to be provided for each precinct.

CHAPTER 55. CONDUCTING ELECTIONS; THE POLLS, VOTING AND CHALLENGES.

- § 700. Manner of voting.
- 703. Record that person has voted, how kept.
- 704. Marking precinct registry book when elector has voted—Procedure.

CHAPTER 56. VOTING BY ABSENT ELECTORS.

- 715. Voting by elector when absent from place of residence.
- *717. Form of application.
- *718. Acceptance of application—Delivery of ballot.
- *721. Marking and swearing to ballot by elector.
- 722. Disposition of marked ballot upon receipt by clerk.
- 727. Envelopes containing ballots—Deposit in box and rejection of ballot.

CHAPTER 57. ELECTION RETURNS.

- 777. What ballots must be counted.

CHAPTER 65. THE STATE BOARD OF EDUCATION—ITS COMPOSITION, POWERS AND DUTIES.

- *831. Appointment and term of members of state board of education.
- 836. Relating to state certificates.
- 837-840. Relating to teachers' certificates.

CHAPTER 66. CONTROL OF STATE EDUCATIONAL INSTITUTIONS.

- *841. General control of state institutions.
- 850. Control of expenditures by the state board of examiners.

CHAPTER 67. THE UNIVERSITY OF MONTANA.

- *852. Institutions comprising University of Montana.
- *854. Diplomas.
- *860. Refunding fare to students.

CHAPTER 70. AGRICULTURAL EXPERIMENT STATIONS.

- 889. Establishment and objects.
- 891. Agricultural experiment station.
- *893.1. Acceptance of congressional act.
- *893.2. Who may receive funds.
- 895. Acceptance of certain acts of congress.

CHAPTER 72. THE STATE ENTOMOLOGIST.

- *916. Expenses.

CHAPTER 73. THE NORTHERN MONTANA AGRICULTURAL AND MANUAL TRAINING SCHOOL.

- *917. Declaration regarding northern Montana agricultural and manual training school.
- *918. Control, where vested.
- *921. Executive board—Location of departments.
- *921.1. Board to make study and report.

CHAPTER 74A. THE EASTERN MONTANA STATE NORMAL SCHOOL.

- *930.1. Establishment of eastern Montana state normal school.
- *930.2. Objects and purposes.
- *930.3. Management.
- *930.4. Acceptance of gifts and donations.
- *930.5. Location.
- *930.6. Selection of site.

CHAPTER 75. THE PUBLIC SCHOOLS—SUPERINTENDENT OF PUBLIC INSTRUCTION.

- 943. County superintendents.
- *944. Examinations.
- 947. Temporary state certificates.

CHAPTER 76. COUNTY SUPERINTENDENT OF SCHOOLS.

- § 955. General powers.
- 956. Duties of county superintendent, as to state superintendent.
- *964. Apportionment of school moneys—Warrants.
- 966. Controversies.
- *971. Copies of census, to whom furnished.
- *971.1. Checking card lists.
- 974. Duty to keep office open.

CHAPTER 78. SCHOOL TRUSTEES.

- 989. Conduct of election.
- 997. Term of office—Vacancy—Oath of trustees.
- 1000. Vacancy in office of clerk.
- 1001. Re-arrangement of terms to prevent the election of a majority of the trustees.
- 1005. Organization.
- 1006. Meetings.
- *1010. Transportation of pupils, etc.
- *1010.1. Appeal to state board of education.
- *1010.2. Effect of act.
- *1015. General powers of school boards.
- *1015.1. Endowment fund—Acceptance by schools.
- *1015.2. Endowment fund defined.
- *1015.3. Investment of endowment fund—Disposal on abandonment.
- *1015.4. Custody and investment of endowment fund.
- *1015.5. County treasurer—Duties—Liability—Reports.
- *1015.6. Memorials to donors.
- *1015.7. Legalization of prior acts relative to dormitories.
- *1015.8. Leases of county lands to school districts authorized.
- 1016. Letting contracts and furnishing supplies, trustees not to be interested in.
- 1019. Limitation on purchase of maps, charts, etc.
- *1019.1. Third class school districts—Keeping and examination of books.
- *1019.2. Liability of officers for failure to keep books—Duty of county attorney.
- *1019.3. Report of examination.
- *1019.4. Commissioners to furnish books.

CHAPTER 79. SCHOOL DISTRICTS.

- 1020. School district defined.
- 1022. Powers as body corporate.
- *1023. Limitation upon change of school districts.
- *1024. New school districts—Procedure for creation.
- 1025. Organization of school districts from part of existing districts.
- 1032. Trustees may issue bonds.
- 1033. District boundaries.
- 1034. Consolidated districts—Procedure in event of consolidation—Bonded debts.
- 1035. Joint districts—Formation, control, discontinuance.
- *1036.1. Joint school districts—Tax levies.
- *1036.2. Commissioners to fix tax levy.
- 1037. Discontinuance as joint district.
- *1037.1. Dissolution of joint school districts.
- *1037.2. Existing districts valid when.
- *1037.3. Disposal of property—Limitation of new districts.
- *1037.4. Indebtedness, how adjusted.
- *1037.5. Copies of adjustment—Change of boundaries.
- 1038. Joint school districts on division by creation of new county.

CHAPTER 80. RURAL SCHOOL DISTRICTS.

- *1040. Definition of terms.
- *1041. Formation of rural school districts in any county of Montana which shall accept the provisions of this act.
- *1042. Petition for adoption—Election—Membership of board.
- *1043. Qualifications and election of trustees—Petitions for nomination and election.
- *1044. Powers and duties of trustees—Budget—Taxes.
- *1045. Sinking fund of third class districts.
- *1047. Meetings of board—Election officers—Compensation—Forfeiture of office.
- *1048. Dissolution of rural school districts—Procedure to effect.

CHAPTER 81. CLERKS OF SCHOOL DISTRICTS.

- § *1051. School census, how taken and reported.
- *1051.1. Examination census by superintendent—Correction of list.

CHAPTER 82. GRADES AND COURSES OF STUDY IN THE PUBLIC SCHOOLS.

- 1056. Who may attend.

CHAPTER 83. SCHOOL DAY, MONTH AND YEAR—HOLIDAYS—PIONEER AND ARBOR DAY.

- 1061. School year.

CHAPTER 85. TEACHERS—POWERS AND DUTIES.

- 1074. Certificate of qualification.
- *1075. Teachers deemed re-elected when.
- 1086. Normal training required for teachers' certificate.
- 1087. Suspension of teachers' certificates.

CHAPTER 86. STATE AND COUNTY EXAMINATIONS AND CERTIFICATES.

- *1088. Examinations and certificates—Certificate of qualification required of teachers.
- *1089. The state board of educational examiners.
- *1090. County board of educational examiners.
- *1091. Teachers' examinations.
- *1092. Certificates—Kinds.
- *1093. Classification and jurisdiction of certificates.
- *1094. Academic and professional preparation required as prerequisite for issuance of certificates.
- *1095. Fees and funds.
- *1096. Recanvass of papers on appeal.
- *1097. Revocation and suspension of certificates.
- *1098. Renewals.
- *1099. Higher grade certificates—How secured.
- *1100. University credits acknowledged.
- *1101. Existing certificates validated.
- *1102. Training of teachers.
- *1103. Principals and high school teachers' certificates.
- *1104. Types of certificates established for the purpose of articulating with neighboring states having similar types of certificates.

CHAPTER 88. TEACHERS' RETIREMENT SALARY FUND.

- *1116. Monthly contributions to permanent fund.
- *1116A. Penalty for failure of clerk to make deductions or report.
- *1117. Condition for obtaining benefits of law.
- *1118. Retirement salary fund board—Membership.
- *1121. Place of meeting—Additional help, stationery, etc.
- *1124. Duty of county and state superintendent—Warrants.
- *1125. Persons entitled to, and amount of retirement salary.
- *1126. Retirement by reason of bodily or mental infirmity.
- *1127. Determination of school year for purposes of computation.

CHAPTER 94. SCHOOLHOUSE SITES AND CONSTRUCTION.

- 1173. Selection.

CHAPTER 96. TEXT-BOOKS.

- *1189. Meetings of commission.
- *1190. Contracts for supplying text-books.
- 1198. Free text-books to be provided.
- *1199. Estimate and levy of tax for free text-books.

CHAPTER 97. FINANCE.

- *1201.1. State common school equalization fund.
- *1201.2. Common school equalization board.
- *1201.3. Equalization of educational program.
- *1201.4. Distribution of funds.

- § 1205. Purposes for which money may be used.
- *1211. Manner of apportionment and distribution.
- *1212. Statement by county superintendent.
- 1213. Duties of county treasurer.
- *1215. County clerk to report valuation of school districts.

CHAPTER 98. EXTRA TAXATION FOR SCHOOL PURPOSES.

- *1219. District school taxes in excess of ten mills—Election.
- *1223. Challenging voters—Oath of elector—False swearing.

CHAPTER 99. BONDS.

- 1224. Issuance of bonds—Submission of question to electors—Limit.
- *1224.1. Board of trustees of school districts may issue coupon bonds for certain purposes.
- *1224.2. Limitations on amount of issue.
- *1224.3. What forms of bonds may be issued.
- *1224.4. Term of issue, redemption and interest.
- *1224.5. Dates of issue and payment.
- *1224.6. Certain bonds may be issued without holding an election.
- *1224.7. Exchange of other forms of bonds for amortization bonds.
- *1224.8. Petition and election required for bond issues for other purposes.
- *1224.9. Form, contents and proof or petition.
- *1224.10. Meeting of board of trustees to consider petition and calling of election.
- *1224.11. Preparation of ballots.
- *1224.12. Who entitled to vote—List of electors and poll books.
- *1224.13. Conduct of election.
- *1224.14. Percentage of electors required to authorize bond issue.
- *1224.15. Meeting of board of trustees to canvass election returns—Resolution for bond issue.
- *1224.16. Form of notice.
- *1224.17. Publication of notice of sale.
- *1224.18. Sale of bonds.
- *1224.19. Form of bonds.
- *1224.20. Printing of bonds.
- *1224.21. Registration of bonds—Copy to be preserved.
- *1224.22. Payment for bonds.
- *1224.23. County attorney to assist in the proceedings.
- *1224.24. School districts liable on bonds.
- *1224.25. Board of trustees to determine amounts necessary for payment of interest and principal on bonds—Duties of treasurer and county commissioners.
- *1224.26. Levy of taxes by board of county commissioners to pay interest and principal on bonds.
- *1224.27. Liability of the board of county commissioners.
- *1224.28. County treasurer to keep record of the various funds.
- *1224.29. Duty of county treasurer.
- *1224.30. Payment of bonds held by the state and of optional bonds.
- *1224.31. Entry of payments and notice to clerk.
- *1224.32. Balances of sinking funds to be transferred.
- *1224.33. Effect partial invalidity act.
- *1224.34. Repeal.
- 1225. Manner of holding elections—Ballots—Form of bonds.
- 1226. Notice of sale of bonds.
- 1228, 1229. Tax sinking fund and redemption of school bonds.
- 1230. Redemption—Notice to bondholder.
- 1232. Printing of bonds.
- 1234–1242. Relating to issuance of school district refunding bonds.
- 1244–1251. Relating to issuance of school district bonds.
- 1252. Signers required on petition for bond elections.
- *1254.1. School trustees may issue warrants on bank failure—When.
- *1254.2. Funding bonds may issue, when.
- *1254.3. Resolution.
- *1254.4. Interest and term.
- *1254.5. Tax levy.
- *1254.6. Sale of bonds—Advertisement—Use of proceeds.
- *1254.7. Disposal of moneys received from bank.
- *1254.8. Emergency clause.
- *1254.9. County high school trustees may issue warrants on bank failure.
- *1254.10. Funding bonds may issue, when.

- § *1254.11. Resolution.
- *1254.12. Interest and term of bonds—Registration.
- *1254.13. Tax levy.
- *1254.14. Sale of bonds—Advertisement—Use of proceeds.
- *1254.15. Disposal moneys received from bank.
- *1254.16. Emergency clause.
- *1254.17. School trustees may fund indebtedness.
- *1254.18. Issuance warrants in excess of avoidable funds, when.
- *1254.19. Funding bonds may issue, when.
- *1254.20. Resolution.
- *1254.21. Interest and terms of bond—Registration.
- *1254.22. Tax levy.
- *1254.23. Sale of bonds—Advertisement—Use of proceeds
- *1254.24. Emergency clause.

CHAPTER 101. COUNTY HIGH SCHOOLS—ACCREDITED DISTRICT SCHOOLS.

- *1266. Composition and term of board.
- *1267. Appointment by county commissioners—Qualifications.
- *1270. Officers—Election and term—Treasurer.
- *1271. Powers and duties.
- *1271.1. High schools may procure land for gymnasiums and dormitories.
- *1271.2. High school dormitory petty cash fund.
- *1275. Tax levy.
- *1280. Accredited county high schools to share county moneys.
- *1280.1. Segregation county and district high school moneys—Warrants.
- *1281. Special district high school tax.
- *1281A. Status of accredited high schools—Apportionment tax.
- *1281.1. Scope of act.
- *1282. Free attendance—Fees when required.
- *1282.1. Proportion of tax, how computed—Attendance basis.
- *1282.2. Applies to 1922 taxes and thereafter.
- *1294. Superintendent of city and county high schools—Apportionment.
- *1301.1. Discontinuance of county high schools—Procedure.
- *1301.2. Petition—Election—Voting—Ballots—Findings.
- *1301.3. Unexpended money—Disposal.
- *1301.4. Payment of bonds and warrants.
- *1301.5. Disposal of delinquent taxes.
- *1301.6. Procedure for disposal of property.
- *1301.7. Sale of property.
- *1301.8. Sales, how made—Reappraisement.
- *1301.9. Disposal of money.

CHAPTER 106. THE MILITIA—GENERAL REGULATIONS.

- *1373.1. Disposal of Spanish-American war fund.

CHAPTER 109. GENERAL PROVISIONS AND EMERGENCY CLAUSE.

- *1401. Exemptions from jury duty and poll tax.

CHAPTER 110. INSANE ASYLUM.

- *1415. Superintendent of asylum and assistant—Appointment, removal and salary.

CHAPTER 111A. STERILIZATION OF INMATES OF CUSTODIAL INSTITUTIONS.

- *1455.1. Title of act.
- 1455.2. Definition of terms.
- *1455.3. State board of eugenics.
- *1455.4. Duties of the state board of eugenics.
- *1455.5. Responsibility for sterilization.
- *1455.6. Consent.
- *1455.7. Liability.
- *1455.8. Purpose of findings and orders.

CHAPTER 115. TUBERCULOSIS SANITARIUM.

- *1520. Admission of patients to sanitarium—Soldiers, sailors and marines.
- 1525. Donations, to whom made.

CHAPTER 116. SOLDIERS' HOME.

- § *1529. Board of managers—Appointment—Term—Removal.
- *1533. Commandant—Appointment—Salary and duties.
- *1536. Admissions of wives and widows to home.
- *1546. Chaplain—Duties and salary.

CHAPTER 117. THE STATE HISTORICAL LIBRARY.

- *1560.1. Historical Society of Montana.
- *1560.2. Historical fund.
- *1560.3. Duties of treasurer—Appointment of commission, when.
- *1560.4. Design for permanent building.
- *1560.5. Building for use of society.
- *1560.6. Furnishing cost.
- *1560.7. Submission of claims.
- *1560.8. Report on completion of work.
- *1560.9. Designation of building lot.
- *1560.10. Commission—Quorum—Expenses—Office.
- *1560.11. Maintenance of building by state.
- *1560.12. Art gallery.
- *1560.13. Official seal of Historical Society.
- *1560.14. Design.

CHAPTER 124. HIGHWAYS—DEFINITION AND CLASSIFICATION.

- 1612. Public highways defined.

CHAPTER 125. ROAD TAXES AND BONDS.

- 1617. Road tax levy—General road tax.

CHAPTER 126. SUPERVISION OF PUBLIC HIGHWAYS.

- *1622. Powers and duties of county commissioners respecting highways.
- *1622.1. Control of highways by county surveyor in certain counties.
- *1622.2. Office of road supervisor abolished.
- 1624. Road supervisors—Appointment and compensation.
- 1627. Removal of obstructions and repair of bridges.

CHAPTER 127. ESTABLISHMENT, ALTERATION AND VACATING OF PUBLIC HIGHWAYS.

- 1647. Crossing of railroad, canals, and ditches.

CHAPTER 128. SPECIAL ROAD DISTRICTS.

- *1652. Corporate capacity and purpose of special road districts—Surveyor—County and district bridges.

CHAPTER 129. LOCAL IMPROVEMENT DISTRICTS.

- *1686. Letting of contract—Conditions of same.

CHAPTER 130. PUBLIC BRIDGES.

- 1704. Bridge Tax—Levy and collection.

CHAPTER 134. SPEED AND TRAFFIC REGULATIONS.

- 1742. Speed regulations.
- *1743. Traffic regulation.
- 1744.1. Drivers of motor vehicles—Duty when accident occurs—Penalties.
- 1748. Liability of owner for negligence of driver.
- *1749. Regulation of moving machines on highways.
- *1749.1. Sleigh runners; regulation of size.
- *1749.2. Penalty.
- 1753. Accessories required upon motor vehicles.
- 1754. Penalties for violation of act—Reporting convictions—Duty of officers.

CHAPTER 135. REGISTRATION OF MOTOR VEHICLES—CERTIFICATES OF TITLE.

- § *1755. Duties of registrar of motor vehicles—Records.
 *1759.1. Information required on application for registration of automobiles.
 *1759.2. List of delinquent motor vehicle taxes.
 *1759.3. Procedure if property tax delinquent.
 *1759.4. Regulation of late registrations.
 1759, subd. 4. Relating to registration of motor vehicles on sale.
 *1760. Registration fees.
 *1760.1. What fees affected by act.
 *1763.1. Definitions.
 *1763.2. Certificate of title for motor vehicles.
 *1763.3. New certificate required after sale or transfer.
 *1763.4. Certificate of title required to operate motor vehicles.
 *1763.5. Certificates of registration for motor vehicles.
 *1763.6. Old certificates of registration to be returned to registrar of motor vehicles.
 *1763.7. Transfer of ownership file to be kept by registrar of motor vehicles—Transferee of title required to make application for new certificate.
 *1763.8. Registrar of motor vehicles may refuse to issue certificate or revoke same if issued.
 *1763.9. Penalty for false statement in application for certificate or assignment thereof and possession of stolen motor vehicle.
 *1763.10. Certificates for dealers and manufacturers.
 *1763.11. Original or duplicate certificate of registration to be presented—Fee.
 *1763.12. Alteration or forgery of certificate of title or assignment thereof and penalty therefor.
 *1763.13. Report of stolen and recovered motor vehicles.
 *1763.14. Licensing of second-hand dealers—Keeping records of vehicles received for sale and penalty.
 *1763.15. Penalty for sale of vehicle with engine number altered or changed—Application for special number.
 *1763.16. Dealer to furnish purchaser with bill of sale.
 *1763.17. Appointment of deputy—Authority of peace officers.
 *1763.18. Auto-theft fund, how used.
 *1763.19. Records shall be open for public inspection.
 *1763.20. False statements shall constitute perjury.
 *1763.21. Any part declared unconstitutional shall not render remainder of act invalid.

CHAPTER 137. PRIVATE ROADS—HOW ESTABLISHED.

1765. How established.

CHAPTER 138. FERRIES.

1766. Ferries between counties.
 1770. Duty of board of commissioners.

CHAPTER 139. STATE HIGHWAY COMMISSION.

- *1783. State highway commission—Creation, salary and bond—Terms.
 1790. Contracts, how awarded.

CHAPTER 141. STATE BOARD OF LAND COMMISSIONERS—DEFINITION OF STATE LANDS.

1805. Definitions.

(a) *Department of State Lands—State Board of Land Commissioners.*

- *1805.1. Department of state lands and investments created—Purpose.
 *1805.2. Definitions.
 *1805.3. Powers and duties of the board.
 *1805.4. Meeting of the board—Preservation of records.

(b) *The Commissioner—The State Forester—Their Powers and Duties.*

- *1805.5. Appointment of commissioner—Manner of qualifying.
 *1805.6. State forester.
 *1805.7. Appointive powers of commissioner—Management of office.
 *1805.8. Powers and duties of commissioner—Ex-officio secretary of the board.
 *1805.9. Reports by state treasurer.

- § *1805.10. Biennial report of commissioner.
- *1805.11. Duties of assistant commissioner.
- *1805.12. Duties of chief field agent.
- *1805.13. Oath of office and bonds.
- *1805.14. Salaries and compensation—Persons now appointed to hold office during terms for which appointed—Appropriations.

(c) *Selection—Classification—Appraisal and Exchange of Lands.*

- *1805.15. Selection.
- *1805.16. Classification.
- *1805.17. Appraisal.
- *1805.18. Board to prescribe further rules for appraisal.
- *1805.19. Exchange of state lands.

(d) *Leasing of Agricultural Lands—Grazing Lands and Town, City and Other Lots.*

- *1805.20. Leasing of agricultural and grazing lands and town and city lots.
- *1805.21. Renewal of leases—Cancellation before expiration.
- *1805.22. Arbitrators to fix value of improvements—Appeal.
- *1805.23. Who may lease, how much, and for what length of time.
- *1805.24. Lease expiration dates.
- *1805.25. Rental, how determined.
- *1805.26. Rental, when due.
- *1805.27. Land to be leased in compact bodies.
- *1805.28. Change in terms of lease.
- *1805.29. Form of lease—Bond.
- *1805.30. Share rent.
- *1805.31. Liens on crops and improvements.
- *1805.32. Leases may be assigned—Preference—Subleasing—Actual users to be given preference.
- *1805.33. Acquisition of water right by lessee.
- *1805.34. Compensation for improvements.
- *1805.35. Preference right of former lessee.
- *1805.36. Cancellation of leases.
- *1805.37. Leasing regulations.

(e) *Coal Mining Leases and Permits.*

- *1805.38. Coal mining leases.
- *1805.39. Not more than one section may be leased to one person—Term—Fee.
- *1805.40. Royalty.
- *1805.41. Application—Deposit.
- *1805.42. Bond.
- *1805.43. Improvements of former lessee.
- *1805.44. Board may prescribe additional rules and regulations.
- *1805.45. Report and payment of royalty.
- *1805.46. Coal mining permits for private use and for schools.
- *1805.47. Disposition of royalties and other receipts.

(f) *Prospecting Permits and Mining Leases.*

- *1805.48. Board may grant prospecting permits.
- *1805.49. Term of permit—Fees—Penalties—Regulations.
- *1805.50. Mining lease.
- *1805.51. Disposition of royalties—Fees and penalties.

(g) *Leases and Permits for Limestone, Oil Shale, Clay, Stone, Gravel and Sand.*

- *1805.52. The board may issue leases.
- *1805.53. Disposition of royalties and other receipts.
- *1805.54. Land may be leased for other purposes.
- *1805.55. Stone, gravel and sand permits for public use.

(h) *Granting of Easements for Public Purposes.*

- *1805.56. Conveyances and easements to the United States.
- *1805.57. Easements for school sites and grounds and other public uses.
- *1805.58. Right of way for public highways and streets on state land section lines.
- *1805.59. Right of way easement applies to past proceedings.
- *1805.60. Right of way easements on section lines on state lands under certificate of purchase.
- *1805.61. Easements for right of ways outside state land section lines—Rights of purchasers.
- *1805.62. Right of way easements for railroads and other purposes.
- *1805.63. Settlement with lessees.

(i) Sale of State Lands.

- § *1805.64. Certain state lands not subject to sale.
- *1805.65. Mineral reservations in state lands.
- *1805.66. Certain shore lands not subject to sale.
- *1805.67. Certain lands to be platted before sale.
- *1805.68. Surveying and platting left to discretion of board.
- *1805.69. Lands within federal irrigation projects.
- *1805.70. Board to decide when to hold sales and what lands to sell.
- *1805.71. Who may purchase and how much.
- *1805.72. Sale at public auction—Where held.
- *1805.73. Notice of sale.
- *1805.74. Mortgage lands to be included.
- *1805.75. Sales, how conducted—Proceeds.
- *1805.76. Board may prescribe additional rules and regulations.
- *1805.77. Mortgage lands may be sold on advertising for sealed bids.
- *1805.78. Mortgage lands may be sold at private sale.
- *1805.79. Terms of payment.
- *1805.80. Conversion of certain other certificates to amortization certificates.
- *1805.81. Lien on improvements and crops for principal, interest, penalty interest and taxes.
- *1805.82. Approval or disapproval of sales.
- *1805.83. Settlement for improvements.
- *1805.84. Time of possession.
- *1805.85. Certificate of purchase.
- *1805.86. Time from which balance on purchase price draws interest.
- *1805.87. Payments of installments.
- *1805.88. Default in payment of purchase price—Cancellation of certificate.
- *1805.89. Repurchase of land upon which certificate has been canceled.
- *1805.90. Certificates may be assigned.
- *1805.91. Lost certificate.
- *1805.92. Land subject to taxation.
- *1805.93. Purchaser of state lands may sign petitions relating to irrigation districts—Interest purchaser subject to lien.
- *1805.94. If lands revert.
- *1805.95. Patents.
- *1805.96. Patents, how executed.
- *1805.97. Limitation for cancellation of patent.

(j) General Provisions Concerning Investments.

- *1805.98. Investment of permanent funds.
- *1805.99. Certain securities to be payable on the amortization plan.
- *1805.100. Conversion of other forms of bonds into amortization bonds.
- *1805.101. Purchase of county warrants or school district warrants.
- *1805.102. Investment of income funds.
- *1805.103. Approval of securities.
- *1805.104. Securities, how paid.
- *1805.105. Treasurer to preserve securities and keep records.

(k) Management and Disposition of State Farm Loans Made Before This Act Takes Effect.

- *1805.106. Conversion into amortization mortgages.
- *1805.107. Lien on crops on mortgaged lands.
- *1805.108. Attorney general to take charge of delinquent loans and mortgages.
- *1805.109. Sheriff's deed may be taken by state—Deficiency judgment.
- *1805.110. The mortgagor and parties claiming under him may repurchase lands.
- *1805.111. County commissioners to release certain liens.
- *1805.112. County attorneys to represent the state.

(l) Miscellaneous Provisions.

- *1805.113. Acceptance of federal land grants.
- *1805.114. Gifts, donations, grants, legacies and devises to the state.
- *1805.115. Board authorized to correct errors.
- *1805.116. Money paid by mistake to be refunded.
- *1805.117. Who may not buy or lease state lands.
- *1805.118. Violations of this act classified.
- *1805.119. Punishments.
- *1805.120. Fees.
- *1805.121. Heading, subtitles, and captions no part of the act.
- *1805.122. Findings of unconstitutionality—Effect of.

- § *1805.123. Repeal.
- *1808.1. Acceptance of congressional grants of school sections.
- 1809-1817. Relating to state board of land commissioners.

CHAPTER 142. REGISTER AND DEPUTY REGISTER OF STATE LANDS.

1818-1823. Relating to register of state lands.

CHAPTER 143. STATE LAND AGENT.

1824-1829. Relating to state land agent.

CHAPTER 144. STATE FORESTS—ADMINISTRATION.

- 1830. State forestry.
- *1830.1. State forests—Establishment.
- *1830.2. Designation of certain state forests.
- *1830.3. State forester—Appointment—Duties.
- *1830.4. Regulation of sale of state timber.
- *1830.5. Bond.
- *1830.6. Damages for breach of timber sale agreement.
- *1830.7. Regulation of permits.
- *1830.8. Duties of state forester—Sealing.
- *1830.9. Co-operation with land owners.
- *1830.10. Receipt of money—Co-operative work fund.
- 1832. Appointment, salary and bond of assistant state forester.
- 1837. Expenses of state forester.

CHAPTER 145. CONTEST BOARD.

1840. Contest board.

CHAPTER 147. CLASSIFICATION AND SALE OF STATE LANDS AND EASEMENTS THEREIN.

1843-1871. Relating to classification and sale of state lands.

CHAPTER 148. SALE OF TIMBER—LOG-MARKS.

1873-1878. Relating to the cutting of state timber, permits, payment and log-marks.

CHAPTER 149. LEASES AND RENTALS OF STATE LANDS.

- 1882. Board may lease.
- *1882.1. State oil lands, how leased.
- *1882.2. Limitation and regulation of oil leases.
- *1882.3. Rentals—Fees—New Leases.
- *1882.4. Royalties.
- *1882.5. Reports by lessees.
- *1882.6. Leases may be canceled, when.
- *1882.7. Authority of board.
- *1882.8. Rights of present lease holders.
- *1882.9. Bonds.
- *1882.10. Forfeiture of leases—Hearings.
- *1882.11. Drilling conditions.
- *1882.12. Royalties—Payment and disposal.
- *1882.13. Approval of amendatory enabling act.
- *1882.14. Correction of errors.
- *1882.15. Re-leasing—Advertising.
- *1882.16. Assignments.
- *1882.17. Disposal of improvements on termination of lease.
- *1882.18. Termination by lessee.
- *1882.19. Offset wells—Reports.
- *1882.20. Interest by board or employees forbidden.
- *1882.21. Penalty.
- *1882.22. Penalty for false statements.
- *1882.23. Effect of partial invalidity act.
- *1882.24. Repealing clause.
- 1882-1904. Relating to leases and rentals of state lands.
- 1886. Leases conditioned on payment of rental in advance.
- *1904. Holding over and trespass.

CHAPTER 150. LOCATION OF MINING CLAIMS ON STATE LANDS.

§ 1905-1906. Relating to mining claims on state lands.

CHAPTER 151. LIEU TIMBER LANDS.

1907-1908. Relating to lieu lands.

CHAPTER 152. FINANCE—GENERAL PROVISIONS REGARDING.

1909-1911. Relating to state finance.

*1912. State's preference right to purchase general fund warrants.

*1916. Land board to permit redemption of bonds.

1918. Expenses of administering state lands, how paid.

CHAPTER 154. INVESTMENT OF SCHOOL FUNDS—FARM LOANS.

*1928A. Permanent common school and other educational funds, how invested—
Amortization bonds.

*1928B. Conversion of existing mortgages—Limit of loans.

*1930. Application for loans—Approval and rejection.

*1932A. Mortgages—Plan—Expiration—Term—Interest.

*1932B. Conversion of mortgages—Limit of loan—Costs.

CHAPTER 157. DEFINITIONS.

1996. Definition of terms.

CHAPTER 158. PROPERTY SUBJECT TO TAXATION.

1997. Property subject to taxation.

1998. Exemptions from taxation.

CHAPTER 159. CLASSIFICATION OF TAXABLE PROPERTY.

1999. Classification of property for taxation.

2000. Basis for imposition of taxes.

*2000.1. Taxable value, how ascertained.

*2000.2. Determination percentage basis taxable value.

*2000.3. Taxpayer may appeal.

*2000.4. Board of equalization to make determination.

*2000.5. County clerk to apply percentage.

*2000.6. Assessor's blanks and rolls.

CHAPTER 160. ASSESSMENTS OF PROPERTY—VALUATION OF REAL ESTATE—POWERS, DUTIES AND LIABILITIES OF ASSESSOR.

2001. Property assessed at cash value.

2002. When assessment to be made—Credits must be assessed, how.

*2002.1. Valuation of real estate for assessment in 1927.

*2002.2. Valuation by assessor—Effect of destruction of improvements.

2003. Statement—What to contain.

2006. General powers of assessor.

2007. Method of making assessment upon refusal of statement.

2008. Assessment of unknown or absent owners.

2009. Same—In whose name property to be assessed.

2013. Property of a firm or corporation—Where assessed.

2015. Capital stock and franchises of corporations—Where assessed.

2021. Assessment of railroads, telegraph, telephone and electric light lines.

2022. Railroads—How assessed.

2023. Land—How assessed.

2024. Uniform classification of lands for taxation.

2026. Basis of classification.

2027. Classification fund—Warrants—Payment of existing contracts.

2034. Property not assessed the previous year.

*2038. Traveling expenses of assessor and deputies.

2039. Assessors liable for unassessed property.

CHAPTER 161. THE ASSESSMENT-BOOK—STATEMENTS FURNISHED BY ASSESSOR.

2048. Property—How listed.

CHAPTER 162. TAXATION OF BANKS.

- § 2064. Assessment of stock in banking corporations.
- 2066. Statements to be furnished by officers.
- *2067. Taxation of state and private banks—Statements.

CHAPTER 163. BOUNTY FUND—TAXATION OF LIVESTOCK BROUGHT INTO STATE TO GRAZE.

- 2069. Assessment of migratory livestock.
- 2070. Duty of owner when livestock is removed from home county to another county.
- *2081. Bounty fund and tax levy.
- *2081.1. Time of bounty payment.
- *2083. Petition—Signers and filing—Bounties and bounty inspectors.
- *2087.1. License tax imposed on stock coming into state to graze.
- *2087.2. Owner to notify county treasurer.
- *2087.3. Assessor to ascertain stock liable to tax.
- *2087.4. Penalty.
- *2087.5. Disposal of moneys.

CHAPTER 164. TAXATION OF MINES—NET PROCEEDS TAX.

- 2088. Taxation of mines.
- *2089. Statement gross yield of mines.
- *2090. Net proceeds—How computed.
- *2091. Certification of net proceeds to county clerk.
- *2095. Levy and collection of tax.
- 2096. Surface ground and improvements not exempt.
- *2096.1. Owners of royalty interests in mines to make statement.
- *2096.2. Assessment by board of equalization.

CHAPTER 165. TAXATION OF FREIGHT LINE COMPANIES.

- *2099. Freight line companies to file statements—Contents.
- *2101. Ascertainment of gross earnings—Tax levy.
- *2103. Statement of gross earnings and tax to be mailed companies—Protests.
- *2105. Certification of valuation for taxation.

CHAPTER 167. COUNTY BOARDS OF EQUALIZATION.

- 2113. County commissioners—When to equalize assessment.
- *2114. Board may equalize assessments—Notice.
- 2115. The person aggrieved must apply.

CHAPTER 168. STATE BOARD OF EQUALIZATION.

- 2122. Who constitute the board.
- *2122.1. State board of equalization—Composition—Term—Vacancies.
- *2122.2. Qualification and compensation.
- *2122.3. Organization, quorum, sessions.
- *2122.4. Definitions.
- *2122.5. Clerks, experts, rules.
- *2122.6. Office expenses.
- *2122.7. Continuity of action of former board.
- *2122.8. Powers and duties defined.
- *2122.9. Appeal to state board of equalization.
- *2122.10. Notice of intention to change assessment.
- *2122.11. Assessment of omitted property.
- *2122.12. Statement of changes to be sent to county clerk.
- *2122.13. Determination of state rate of taxation—Notice of.
- *2122.14. Penalty for refusal to furnish information.
- *2122.15. Duties of public officers.
- *2122.16. Hearings, witnesses, contempt, fees and subpoenas.
- *2122.17. Seal.
- *2122.18. Unconstitutionality or invalidity.
- *2122.19. Board of equalization to collect certain taxes.
- *2122.20. Assessment and apportionment of net proceeds of mines and other property.
- *2122.21. Transmission statement to county clerk.
- *2122.22. Clerk to enter assessment.
- *2122.23. Procedure for correction or change of assessment.

- § 2123. General powers and duties of board.
 2124. Appeal to state board of equalization.
 2125-2130. Relating to the state board of equalization.

CHAPTER 169. ASSESSMENT OF RAILROADS BY STATE BOARD OF EQUALIZATION.

- *2131. Assessment of railroads.
 2134. County commissioners to enter assessment order.

CHAPTER 170. ASSESSMENT OF CERTAIN TELEGRAPH, TELEPHONE AND ELECTRIC POWER PROPERTIES BY STATE BOARD OF EQUALIZATION.

2145. Order of board of commissioners declaring valuations.

CHAPTER 171. LEVY OF TAXES.

2147. The levy.
 2148. State tax levy of three and one-half mills—Support of university of Montana.
 2149. Rate of taxation fixed by state board.
 2152. Tax operates as a judgment or lien.
 *2153. Lien of personal property taxes.
 *2154.1. Filing notice of federal tax liens.
 *2154.2. Index of tax liens.
 *2154.3. Certificate of discharge.
 *2154.4. Furnishing of files.
 *2154.5. Purpose of act.
 *2154.6. Interpretation of act.
 *2154.7. Act, how cited.

CHAPTER 172. DUTIES OF COUNTY CLERK IN RELATION TO TAXES.

2159. To follow directions of state board of equalization.
 *2161. Delivery of assessment-book and affidavit.
 *2163. Clerk to charge treasurer.
 *2165. Clerk to charge and credit collectors.
 *2165.1. Special poll tax—Collection and receipt

CHAPTER 173. COLLECTION OF PROPERTY TAXES—TAX SALES—REDEMPTIONS.

- *2169. Treasurer to publish notice of delinquency.
 *2169.1. Taxes, when payable—Interest on delinquent.
 *2171. Treasurer to note date and amount of payment.
 *2172.1. County treasurer to collect and receipt for irrigation and drainage district taxes.
 *2174. Quarterly settlement by county treasurer.
 2175. When taxes become delinquent—Penalty.
 *2176. Report by county treasurer to clerk.
 *2180. Treasurer charged with delinquent taxes.
 *2181. Statement to be transmitted to the state board of equalization by the county clerk.
 *2182. Publication of notice of tax sale.
 2183. Notice of sale appended to delinquent tax list.
 2188. Additional sum collected to defray costs.
 *2191. Designations of portions to be sold, purchase of least quantity or interest—Sale to county—Title.
 *2197.1. Refund of money to purchasers of certain tax titles.
 *2200.1. Remission 1922 tax delinquencies.
 *2200.2. Publication notice postponement.
 *2200.3. Remission and refund penalties—Interest rate.
 2209. Notice of application for tax deed.
 *2209.1. Municipalities may procure tax deed, how.
 *2209.2. Validation of certain tax deeds.
 2210. Redemption from tax sales.
 *2211. Redemption from tax sales by mortgagees and lienholders—Apportionment.
 2212. No deed to issue under certain circumstances.
 *2214. Of what deed is evidence—Action to annul.
 *2215. Title conveyed by deed.
 *2235. Sale of unredeemed property by county commissioners.
 *2235.1. Repealing clause—Proviso.

CHAPTER 174. COLLECTION OF PERSONAL PROPERTY TAXES NOT A LIEN ON REAL ESTATE.

- § *2238. Duty of assessor.
- *2239. Duty of treasurer.
- 2244. Title to such property vests in purchaser on payment.

CHAPTER 176. SETTLEMENT WITH STATE AUDITOR AND STATE TREASURER.

- *2255. Settlement of county treasurer with state treasurer.
- 2256. Penalty imposed on treasurers neglecting to settle.
- *2257. Report of county clerk to auditor.
- 2258-2264. Relating to settlement by county clerk with state auditor and treasurer for taxes.

CHAPTER 177. PAYMENT OF TAXES UNDER PROTEST—ACTIONS TO RECOVER.

- *2269. Payment of taxes under protest—Action to recover.
- *2270. Assessment for taxation—Increase over statement of owner.
- *2272.1. Suit for recovery of federal taxes authorized.
- *2272.2. Board of examiners to seek legislation.
- *2272.3. Disposal of moneys.
- *2272.4. Employment counsel—Proviso.
- *2272.5. Notice to claimants.
- *2272.6. Assertion of claims—Payment—Appeals.
- *2272.7. Escheat of funds.

CHAPTER 178. POLL TAX.

- 2273. Persons liable to poll tax.
- 2295. Disposal of proceeds.

CHAPTER 179. CORPORATION LICENSE TAX.

- 2296. Corporation license tax—Organizations not liable for same.
- 2297. Method of ascertaining net income of corporation doing business wholly within state.
- *2299. License fee, how computed—Return of income.
- *2300. Assessments, how made—Payment fee—Penalty.
- *2302. Filing returns.
- *2303. Procedure on understatement—Forms—Determination and payment of tax—Disclosures.
- *2303.1. Effect of repeal.

CHAPTER 181. SLEEPING-CAR COMPANY LICENSE TAX.

- *2313.1. Definitions.
- *2313.2. Reports.
- *2313.3. Assessment.
- *2313.4. Method of determining valuation.
- *2313.5. Notice of hearing.
- *2313.6. License tax.
- *2313.7. Failure to report—Nonpayment—Action for collection.
- *2313.8. Estoppel.
- *2313.9. First tax, when due.
- *2313.10. License.
- *2313.11. Repeals—Exceptions.
- 2314. License of sleeping-car company.
- 2315. Statement to be filed by company.

CHAPTER 182. COAL MINES AND DEALERS' LICENSE TAX.

- 2317. Coal mines license tax—Amount—Exceptions.
- 2328. License to retail coal—Fees.
- 2330. Payment of license fees.

CHAPTER 183. METALLIFEROUS MINES LICENSE TAX.

- 2344. "Person" defined.
- *2344.1. "Person" defined.

- § 2344.2. License tax.
- *2344.3. Gross value of product, how determined.
- *2344.4. Amount of tax.
- *2344.5. Computation of gross value of product.
- *2344.6. Computation and notice of tax.
- *2344.7. Delinquent taxes—Penalty.
- *2344.8. Penalty for failure to file statement.
- *2344.9. Production of evidence.
- *2344.10. Rehearing on determination of license tax.
- *2344.11. Lien of tax.
- *2344.12. Disposal of proceeds of tax.
- *2344.13. Commencing business.
- *2344.14.
- *2344.15.
- *2344.16. Unconstitutionality or invalidity.
- *2344.17. Repealing clause.
- 2347. Net proceeds—Computation of.

CHAPTER 184. CEMENT PRODUCERS' AND DEALERS' LICENSE TAX.

- *2357. License tax on manufacturers of cement, etc.
- *2368. License tax on sales of cement, etc.

CHAPTER 185. GASOLINE DISTRIBUTORS' AND DEALERS' LICENSE TAX.

- 2381. "Person," "distributor" and "dealer" defined.
- *2382. Gasoline distributors' license tax.
- *2383. Gasoline dealers' license tax.
- *2384. Quarterly payment of tax—Delinquencies.
- *2389. Penalty for failure to make statement—Suit for collection.
- *2392. Expenditure proceeds tax in highway construction.
- 2393, 2394. Relating to apportionment of gasoline license tax.
- *2396.1. Definition of terms.
- *2396.2. Gasoline dealers' license tax.
- *2396.3. Dealers' statements—Amount of tax.
- *2396.4. Rules of board of equalization.
- *2396.5. Penalty for delinquency.
- *2396.6. Dealers to keep records.
- *2396.7. Penalty.
- *2396.8. Fixing tax in absence of statement—Penalties—Prosecution—Liens.
- *2396.9. Inspection of records.
- *2396.10. Dealers' invoices.
- *2396.11. Export gasoline excepted.
- *2396.12. Railroad reports.
- *2396.13. Disposal of tax moneys—Limitations.
- *2396.14. Effect of partial invalidity act.
- *2396.15. Penalties.
- *2396.16. Distribution of state highway fund.
- *2396.17. Expenditure of funds under federal aid act—Limitations.
- *2396.18. Percentage of uncompleted mileage.
- *2396.19. Refund of certain gasoline license taxes.
- *2396.20. Penalty for false statement.

CHAPTER 186. OIL PRODUCERS' LICENSE TAX.

- 2397. "Person" defined.
- *2398. Oil license tax—Amount—Development work excluded.
- *2399. Payment and distribution of tax.
- *2400. Gross value of product—How determined.
- *2401. Producers to file reports.
- *2402. Record of product.
- *2403. Statement of quarterly product—Verification.
- *2404. Unlawful—Failure to make statement.
- *2405. Procedure to compute and collect tax in absence of statement.
- 2406. Disposal of license tax.

CHAPTER 189. TRANSIENT RETAIL MERCHANTS', HUCKSTERS' AND ITINERANT VENDORS' LICENSES.

- 2421. Itinerant vendors to obtain license.
- *2421.1. Transient retail merchant defined.

- § *2421.2. Amount of license.
- *2421.3. Application for license.
- *2421.4. Provision for bond in lieu of license.
- *2421.5. Issuance of license indorsement and filing of application.
- *2421.6. Penalty for failure to exhibit license.
- *2421.7. Penalty for doing business without license.
- *2421.8. Interpretation of provisions of law.
- *2421.9. Huckster defined.
- *2421.10. Amount of license.
- *2421.11. Application for license.
- *2421.12. Issuance of license.
- *2421.13. Penalty for failure to exhibit license.
- *2421.14. Penalty for doing business without license.
- *2421.15. Interpretation of provisions of law.
- *2421.16. Itinerant vendor defined.
- *2421.17. Amount of license.
- *2421.18. Application for license.
- *2421.19. Bond required if deposit taken on orders for future delivery.
- *2421.20. Issuance of license indorsement and filing of application.
- *2421.21. Penalty for failure to exhibit license.
- *2421.22. Penalty for doing business without license.
- *2421.23. Interpretation of provisions of law.
- 2422-2428. Relating to licensing itinerant vendors.

CHAPTER 191. MISCELLANEOUS LICENSES.

- 2441. Architects, builders, contractors, manufacturers.

CHAPTER 192. STATE, LOCAL AND COUNTY BOARDS OF HEALTH.

- 2459. Secretary authorized to act for state board in emergency cases.
- *2460.1. Authority of state agencies to administer federal Indian appropriations.
- *2460.2. Authority of state boards to administer.
- *2460.3. Budgets.
- 2464. Local boards of health.
- 2467. Duties of local health officer.
- 2468. Penalties for failure to comply with orders of board.
- 2469. Powers of local board of health.
- 2470. Expenses of local and county boards.
- 2473. County boards of health.
- 2475. Duties of county boards of health.

CHAPTER 197. STATE BOARD OF ENTOMOLOGY—RODENT CONTROL.

- *2561.1. Rodent control by board of county commissioners.
- *2561.2. Spotted fever control fund—Creation and use.
- *2561.3. Report and pay of appointee.
- *2561.4. Purchase of material.
- *2561.5. Rodents—Defined.
- *2561.6. Act supplemental.

CHAPTER 198. CONTROL OF VENEREAL DISEASES.

- 2564. Venereal diseases dangerous to public health.

CHAPTER 199. PURE FOOD AND DRUG ACT.

- 2589. License for manufacturers and purveyors of food and drinks.

CHAPTER 202. REGULATION OF PRODUCTION AND SALE OF DAIRY PRODUCTS.

- *2622. Imitation butter—Regulation sale and use of oleomargarine.
- *2622.1. Regulation advertisements of substitutes for dairy products.
- *2622.2. Penalty.
- *2622.3. License of dealers in oleomargarine and other dairy substitutes.
- *2623A. Adulteration of certain dairy products forbidden.
- *2627. Prohibition of coloring matter.
- *2628. Sale of skimmed milk.
- *2629. Trademarks.
- *2630. Unfair discrimination.
- *2631. Penalty for violation of law.

CHAPTER 203. PROTECTION OF PUBLIC WATER SUPPLY.

- § *2645. Disposal of fees.
 *2645.1. Transfer of funds.

CHAPTER 204. CONSTRUCTION AND EXAMINATION OF DAMS AND RESERVOIRS.

2658. Dams and reservoirs—How constructed.

CHAPTER 207. INSPECTION OF BOILERS—ENGINEERS' LICENSE.

- *2726. Certain boilers exempted—Inspection.

CHAPTER 210. FOREST FIRE PROTECTION—LISTING STATE LAND WITH AGENCIES.

2765. Permits for burning forest material.
 2771-2773. Relating to the burning of brush, slashings, etc.
 *2778.1. Listing of state lands with agencies.
 *2778.2. Uncontrolled fires nuisances—Liability—Abatement.
 *2778.3. Definition of terms.
 *2778.4. Burning permits—Granting and suspension.
 *2778.5. Cutting right of way—Piling brush.
 *2778.6. Duty of those cutting timber to remove fire hazards.
 *2778.7. Removal of slash hazards required—Slashings lien.
 *2778.8. Effect of partial invalidity act.

CHAPTER 213. WORKMEN'S COMPENSATION ACT—INDUSTRIAL ACCIDENT BOARD.

2816. Name of act—What each part to contain.
 2836. Defenses excluded in personal injury action.
 *2837. Defenses not excluded in personal injury action against employer in nonhazardous occupation and certain other occupations.
 2838. Employers not liable for death or injury other than herein defined—Employees who elect not to come under law.
 2839. Employers not liable for death or injury other than herein defined—Employees who elect not to come under act.
 2841. Employers engaged in hazardous industries—Election.
 2847. Act applies to all inherently hazardous occupations as enumerated.
 *2849. Operation.
 2851. Miscellaneous work.
 2852. Hazardous occupations not enumerated or hereafter arising.
 2856. Mill defined.
 *2862. Employer defined.
 *2863. "Employee" and "workman" defined.
 *2865. "Beneficiary" defined.
 *2866. "Major dependent" defined.
 *2867. "Minor dependent" defined.
 2888. "Casual employment" defined.
 2889. "Plant of the employer" includes what.
 *2891. Compensation to children, brothers and sisters and invalid children—When ceases.
 *2898. Compensation paid to parent or guardian.
 *2900. Exception in case of minors and incompetents as to period of limitation.
 2911. Who liable for injuries under the different plans of act, and in what amounts.
 *2912. Compensation for injury producing temporary total disability.
 *2913. Compensation for injury producing total disability permanent in character.
 2914. For partial disability.
 *2915. Compensation for injury causing death.
 *2916. Providing for additional compensation in case death occurs while employee is drawing or entitled to draw compensation payment.
 *2917. Medical and hospital services to be furnished.
 *2919. Compensation to run consecutively—Major and minor dependents not residing in the United States—Manner of payment.
 *2920. Compensation in cases of specified injuries.
 2922. Paralysis of limbs considered loss thereof.
 2960. How appeal taken—Notice—Record—Trial.

- § 2964. Court to give liberal construction to act.
 2970. When and how employer may elect to adopt—Direct payment to employee.
 *2990A. Permitting employers in certain nonhazardous occupations to elect to
 comply and come under the provisions of plans 2 and 3 of this act—
 Classification of such employers and their employees.

CHAPTER 215A. OWNERSHIP OF LAND BY ALIENS.

- *3043.1. Definitions.
 *3043.2. Alien cannot hold land—Forfeiture.
 *3043.3. Other disqualifications of aliens.
 *3043.4. Forfeiture of lands, when.
 *3043.5. Foreclosure of mortgages.
 *3043.6. Certain transfers to aliens forbidden—Penalty.
 *3043.7. Disposal of forfeited property.
 *3043.8. Exceptions.

CHAPTER 216. VOCATIONAL REHABILITATION AND EDUCATION.

- *3051.1. Conditions and amount of monthly allowance.
 *3051.2. Who entitled to allowance—How ascertained.
 *3051.3. Payments, how made.

CHAPTER 219. HOURS OF LABOR.

3071. Hours of labor—Underground miners.

CHAPTER 220. PAYMENT OF WAGES—PROTECTION OF DISCHARGED EMPLOYEES.

3089. Judgment for wages shall include attorney's fee.
 3090. Equal pay for women for equivalent service.

CHAPTER 221. PROHIBITION AGAINST CHILD LABOR.

3095. Employment of children under sixteen years in certain occupations prohibited.

CHAPTER 223. MEDICINE—REGULATION OF PRACTICE.

3122. Practicing medicine without certificate—Penalties.
 *3123. Fees—Reciprocity provisions.
 *3124. Per diem—Medical board fund—Reports.

CHAPTER 224. OSTEOPATHY—REGULATION OF PRACTICE.

- *3127. Regulation of osteopathic licenses, examination and renewals—Unlawful to practice without a certificate.

CHAPTER 225A. PODIATRY—REGULATION OF PRACTICE.

- *3154.1. Podiatry defined.
 *3154.2. License—Regulation amputations.
 *3154.3. Podiatry board—Examinations—Requirements—Fees.
 *3154.4. Subjects of examination—Requirements—Fees.
 *3154.5. Registered podiatrists—Licenses—Filing—Renewals.
 *3154.6. Licenses—Grounds of revocation.
 *3154.7. Medical board fund.
 *3154.8. Board of examiners—Compensation—Expenses—Claims.
 *3154.9. Penalty.
 *3154.10. Exceptions.

CHAPTER 226. OPTOMETRY—REGULATION OF PRACTICE.

3155. Practice of optometry defined.
 *3156. Certain practices by optometrists prohibited.
 *3157. State board of examiners in optometry.
 *3158. Officers—Meetings—Records.
 *3159. Regulation of examinations.
 *3161. Renewals of registration—Penalty.
 *3165. Use of funds—Duty of secretary.
 *3166. Procedure and grounds for revocation of license.

- § *3166.A Second revocation.
 *3167. Penalty.
 3169. Act not to apply to physicians and surgeons.

CHAPTER 227. PHARMACY REGULATIONS—SALE OF OPIATES.

- *3186. Sale of opium, morphine, mariahuana, and their derivatives.
 3188. Penalty for violation of act.
 3189. Regulation of sale of opium and other narcotics.
 3190. Remedies excepted from act.
 3192. Use of opiates by physicians, veterinary surgeons and dentists.
 3200. Regulation of possession or control of drugs.
 *3202. Penalty for unauthorized possession or sale of narcotic drugs.
 *3202.1. Sale of peyote and mescal button forbidden.
 *3202.2. Penalty.

CHAPTER 228. NURSING—REGULATION OF PRACTICE.

- *3210. Requirements of applicants for registration.
 *3211A. Renewal of registration—Fees.

CHAPTER 233. REGULATION OF LIVESTOCK INDUSTRY—DAIRY LICENSES.

- *3257.1. Appropriation fees of livestock commission fund.

CHAPTER 234. THE LIVESTOCK SANITARY BOARD AND STATE VETERINARY SURGEON—QUARANTINE, INSPECTION, AND DESTRUCTION OF DISEASED STOCK.

- *3267.1. Governor may prohibit importation of diseased animals.
 *3267.2. Penalty.
 *3282. Licenses for producers of dairy products.
 *3282.1. Effect of unconstitutionality act.

CHAPTER 236. RECORDING OF MARKS AND BRANDS.

3304. Right of owner of recorded brand.

CHAPTER 239. INSPECTION OF LIVESTOCK ON REMOVAL FROM ONE COUNTY TO ANOTHER.

- *3324. Inspection of cattle on transfer—Duty of railroads.
 *3327.1. Authority to inspect and seize stolen stock.
 *3327.2. Disposal of seized property.

CHAPTER 241. ESTRAYS.

- *3338. Publication of description of estrays sold—Disposition of proceeds remaining in state treasury.
 *3341. Shipment of strays—Tally lists—Duty of railroads.
 *3341.1. Penalty.

CHAPTER 242. INSPECTION OF SLAUGHTERED CATTLE.

3346. Hides of slaughtered cattle to be kept.
 3347–3350. Relating to hides of slaughtered cattle.
 *3350.1. Duty of purchasers of hides of cattle—Inspection.
 *3350.2. Penalty for falsifying bill of sale.
 *3350.3. Other penalties.
 *3350.4. Mutilation or concealment of hides forbidden
 *3350.5. Sufficiency of pleading.
 *3350.6. Penalty.
 *3350.7. Butchers and meat peddlers defined.
 *3350.8. Licenses.
 *3350.9. Inspection and stamping of hides.
 *3350.10. Certificate of inspection.
 *3350.11. Purchase without inspection unlawful—Exception.
 *3350.12. Forfeiture of license, when.
 *3350.13. Penalty.
 *3350.14. Exception.

CHAPTER 245. FENCES—LEGAL FENCE—LIABILITY OF OWNERS OF TRESPASSING STOCK.

- § 3374. Legal fences defined.
- *3376.1. Certain barbed wire fences nuisance.
- *3376.2. Notice to repair—Removal by commissioners.
- *3376.3. Authority of county commissioners—Disposal of fencing.
- *3376.4. Disposal of proceeds of sale.
- 3378. Liability of owners of stock for trespass.
- *3382. Marking—Right of action against trespassing stock.

CHAPTER 246. HERD DISTRICTS.

- *3385. Unlawful for stock to run at large within herd districts—Penalty.

CHAPTER 247. ANIMALS RUNNING AT LARGE.

- 3396-3400. Relating to stud horses and jackasses running at large.
- *3400.1. Running at large of certain animals prohibited.
- *3400.2. Public nuisance.
- *3400.3. Procedure for taking up and disposal of animals.
- *3400.4. Animals may be killed, when—Notice to owner.
- *3400.5. No limitation on right to kill animals, when.
- *3400.6. Effect of partial invalidity act.
- *3404. Regulation of running at large of bulls.

CHAPTER 248. BOUNTIES FOR KILLING WILD ANIMALS.

- 3407. Bounties for wolves, coyotes, and mountain lions.
- *3407.1. Bounties on wolves, coyotes, and mountain lions.
- *3407.2. Claimant shall exhibit skin.
- *3407.3. Sheriff and deputies to act as bounty inspectors—Claim for bounties.
- *3407.4. Bounty claims and certificates to be filed with livestock commission.
- *3407.5. Investigation and indorsement of bounty claims and certificates—Notice of disapproval.
- *3407.6. Delivery of claims and certificates to board of examiners.
- *3407.7. Indorsement by board of examiners—Warrants.
- *3407.8. Application of surplus funds.
- *3407.9. Perjury and forgery—Penalty.
- *3407.10. Bounty fund—Tax levy.
- *3407.11. Penalty for fraudulent claims.
- 3408-3413, 3415-3417. Relating to bounties on wild animals.
- *3417.1. Wild animals defined.
- *3417.2. Livestock commission to supervise destruction.
- *3417.3. Skins, how disposed of.

CHAPTER 252. REGULATION OF COAL-MINING INDUSTRY.

- 3469, 3470, 3471. Relating to examination of applicants for coal mine foreman.
- 3477. Compensation of examining board.
- *3504. Cross-cuts and brattices for ventilation.
- *3524. System of blasting.

CHAPTER 252A. REGULATION OF SALE OF COAL.

- *3546.1. Coal dealers to accurately invoice coal.
- *3546.2. Dealers' requirements.
- *3546.3. Full weight and kind of coal.
- *3546.4. Copies of invoices to be kept for inspection.
- *3546.5. Penalty.
- *3546.6. Enforcement of act.

CHAPTER 253. REGULATION OF PRODUCTION OF OIL AND GAS.

- 3547. Incasing of oil and gas wells.
- *3547.1. Promulgation rules governing production of oil and gas.
- *3547.2. Railroad commissioners to administer act.
- *3547.3. Penalties.
- *3547.4. Oil and gas wells not public utilities.
- 3548. Filling and plugging of wells to be abandoned.
- 3550. Wasteful use of natural gas prohibited.

- § 3553. Owners of abandoned oil wells to file statements.
 3554. Penalty for violation of act.

CHAPTER 254. THE DEPARTMENT OF AGRICULTURE—REGULATION OF FARMING AND DAIRYING—TESTING SCALES AND REGULATION OF WAREHOUSEMEN.

- *3566.1. Requiring the registration of all colonies of honey-bees.
- *3566.2. Requiring the posting of registration certificates.
- *3566.3. Providing for a registration fee.
- *3566.4. Authorizing the expenditure of funds arising from registration fees.
- *3566.5. Providing penalties for violation of this act.
- *3568. Division of farming and dairying—Powers and duties.
- *3569. Registry of location of dairy product factories.
- *3569.1. License of cream buying and collecting stations.
- *3569.2. Regulation of rooms—Boilers.
- *3569.3. Penalty.
- *3570. Babcock test adopted.
- *3570.1. Revocation license of Babcock tester.
- *3570.2. Regulation of sampling of milk and cream.
- *3571. Standard measure for dairy products.
- *3572.1. Cleansing of milk containers required.
- *3572.2. Penalty.
- *3572.3. Processes of pasteurization.
- *3572.4. Pasteurization of milk and cream required.
- *3572.5. Milk or cream used in manufacture of ice-cream to be pasteurized.
- *3572.6. Regulation of apparatus.
- *3572.7. Penalty for misuse of pasteurization label.
- *3572.8. Penalty for violation of act.
- *3574. Definition of terms.
- 3575. Testing of scales—Fee.
- *3575.1. Tester of scales—Employment and duties.
- *3575.2. Fees.
- *3575.3. Expenses, how paid.
- *3575.4. Certificate of test.
- *3575.5. Inspection required.
- *3575.6. Special permission, when granted.
- *3575.7. Penalty for false tests.
- *3575.8. Repealing clause—Exception.
- 3586. Duty of warehousemen to receiving grain—Warehouse receipt.
- *3588. Regulation of delivery of grain by warehousemen—Sampling.
- *3588A. Regulation of delivery of grain by warehousemen.
- *3588B. Storage deemed bailment—Exemption from seizure.
- *3589. Reports and bonds of warehousemen—Licenses—Penalties.
- *3589A. Insolvent warehousemen—Intervention by department.
- *3592.1. License for warehouses handling agricultural seeds.
- *3592.2. Bond.
- *3592.3. Penalty.
- *3592.4. Agricultural seeds defined.
- *3592.5. Duty of warehouseman to receive seeds.
- *3592.6. Commissioner to prescribe rules.
- *3592.7. Storage declared a bailment.
- *3592.8. What warehousemen excepted—Additional bond, when.
- *3592.9. Co-operative associations may handle seed, how.
- *3617.1. Horticultural revolving fund.
- *3645. Department of agriculture revolving appropriation account—Earnings of state fair.
- *3645.1. State fair revolving appropriation account.
- *3649.1. License of dealers in farm produce in carlots.
- *3649.2. Certain acts prohibited.
- *3649.3. General supervision of commissioner of agriculture.

CHAPTER 255. FISH AND GAME LAWS—COMMISSION AND WARDEN.

- *3652. Meetings.
- *3653. Powers and duties of commission.
- *3654. Compensation of commissioners.
- *3655. State fish and game warden—Qualifications—Duties.
- *3656. Deputy fish and game wardens—Appointment.
- *3659. Deputy state fish and game wardens—Qualifications—Duties.

§ *3661.	Deputy state fish and game wardens—Removal—Rating, Salary, etc.
*3662.	Special deputy state fish and game wardens.
*3664.	Superintendent of state fisheries—Appointment and bond.
*3665.	Superintendent of state fisheries—Salary.
*3666.	Superintendent of state fisheries—Duties and powers.
*3670.	State fish and game fund.
*3677.	Publications.

CHAPTER 256. FISH AND GAME LAWS—LICENSES—PROTECTION AND PROPAGATION OF FISH AND GAME.

*3681.	Definition of terms.
*3682.	License required.
*3683.	Classes of licenses.
*3685.	Fees and powers under licenses.
*3686.	Temporary receipt in lieu of license.
*3689.	Carrying and exhibiting license.
*3691.	Exception.
*3694.	Restrictions on the manner of taking and possessing fish and game.
*3695.	Private fish ponds—Regulations.
*3696.	Open season for elk.
*3697.	Open season for deer.
*3698.	Destroying evidences of sex, a misdemeanor.
*3699.	Closed season for Rocky mountain sheep and goats.
*3700.	Closed season for certain game birds.
*3701.	Open and closed seasons for grouse.
*3702.	Power to open and close game districts.
*3703.	Closed season and bag limits on migratory game birds.
*3704.	Closed and open seasons for fur-bearing animals.
*3706.	Penalties.
*3707.	Compensation of persons issuing licenses.
*3714.	Catching fish except with pole, line and hook—Use of traps, nets and seines except as provided in section 12 of this act.
*3717.	Use of explosives or poison prohibited.
*3720.	Chasing big game with dogs a misdemeanor.
*3721.	Catching, trapping or otherwise restraining big game a misdemeanor.
*3722.	Protection of beaver—Beaver license.
*3723.	Penalty for killing or shipping birds without permit—Exception.
*3725.	Possession of game as evidence.
*3726.	Sale of confiscated birds and animals.
*3727.	Certificate of sale.
*3730.	Removal of game from state.
*3731.	Permit to remove game from state.
*3732.	Nonresident's permits to ship game from state.
*3733.	Labeling of packages.
*3734.	Carrier's rules—Confiscation.
*3735.	Penalty.
*3736.	Fee for shipping permits.
*3741.	Definitions.
*3742.	Penalty for unlawful possession and shipment—Scientific or propagating purposes excepted.
*3742.1.	Penalties.
*3742.2.	Effect of partial invalidity act.
*3744.	Transportation or sale of fish or game by carriers.
*3745.	Guides must have licenses.
*3751.	Taxidermists to procure license.
*3752.	Failure to procure license or make report a misdemeanor.
*3753.	Disposition of fines, bonds and penalties.
*3764.	Boundaries of Gallatin game preserve—Penalty for hunting.
*3777.	License for breeding and propagating game birds, game and fur-bearing animals.
*3777.1.	Effect of partial invalidity act.
*3778.1.	Wolf Creek game preserve—Limits.
*3778.2.	Penalty.
*3778.3.	Teton-Spring Creek bird preserve.
*3778.4.	Penalty—Issuance permits.
*3778.5.	Spotted Bear Game Preserve.
*3778.6.	Hunting prohibited—Permits, when issued.
*3778.7.	Little St. Joe Game Preserve.
*3778.8.	Hunting prohibited—Permits.

CHAPTER 257. REGULATION OF RAILROADS—BOARD OF RAILROAD COMMISSIONERS.

- § 3779. Creating of commission.
- *3787. Salary of senior safety appliance inspector.
- 3794. Power of board to fix rates, schedules and classifications.
- 3802. Attorney general as attorney for board.
- 3803. Court review of action of board—Pleadings.
- 3804. Prohibition against rebates and discrimination.
- 3806. Jurisdiction to enforce orders of board.
- *3808. Actions to recover excess charges.
- *3808.1. Limitation of actions.
- 3809. Action to determine reasonableness of rates or classification.
- 3810. Action by shippers.
- 3812. Recovery of penalties and forfeitures.
- 3817. Existing rights of action not affected by law.
- 3827. Rules for equipment of cars, trains and engines.
- 3833. Power to compel construction of commercial spurs.
- 3842. Railroad commission may order electric signal bells installed.

CHAPTER 257A. REGULATION OF MOTOR TRANSPORTATION COMPANIES.

- *3847.1. Official map of state.
- *3847.2. Custody of plates.
- *3847.3. 1927 edition—Distribution—Price.

CHAPTER 258. REGULATION OF COMMON CARRIERS OF OIL.

- 3849. Pipe lines public utilities—Jurisdiction.
- 3850. Regulation of construction of pipe lines—Eminent domain.
- 3851. Establishment of rates—Hearing—Complaints.

CHAPTER 258A. REGULATION OF TRANSPORTATION BY MOTOR VEHICLE.

- *3858.1. Definition of terms.
- *3858.2. Class of transportation subject to act.
- *3858.3. Supervision by railroad commission—Regulation by cities.
- *3858.4. Certificate of permission—Permits.
- *3858.5. Revocation of permits.
- *3858.6. Bond required—Conditions.
- *3858.6A. Effect of partial invalidity act.
- *3858.7. Procedure before commission—Appeals.
- *3858.8. License fee—Expenses.
- *3858.9. Penalties.
- *3858.10. Scope of act.
- *3858.11. Effect of partial invalidity act.

CHAPTER 259. REGULATION OF NAVIGATION—INSPECTION OF BOATS AND VESSELS BY RAILROAD COMMISSION.

- *3859. Appointment of inspectors of water craft.
- *3875. Compensation of inspectors—Inspection and license fees.

CHAPTER 260. REGULATION OF PUBLIC UTILITIES—PUBLIC SERVICE COMMISSION.

- 3879. Creation of public service commission.
- 3880. Railroad commissioners ex-officio commission.
- 3887. Right to examine books, records, etc.
- 3888. Failure to make reports or permit examinations.
- 3891. Schedules of rates, tolls and charges.
- 3892. Greater or less charges than those prescribed—Rebates and privileges.
- 3905. Enforcement of rates or charges.

CHAPTER 260A. REGULATION AND LICENSING OF GASOLINE MANUFACTURERS AND DEALERS.

- *3913.1. Gasoline manufacturers and dealers' license—Application.
- *3913.2. License fee.
- *3913.3. Gasoline inspection fund.
- *3913.4. Public service commission to enforce act.
- *3913.5. Names and grades to be indicated.
- *3913.6. Gasoline standards.

- § 3913.7. Kerosene standards.
- *3913.8. Public service commission to prescribe tests.
- *3913.9. State chemist to make tests.
- *3913.10. Assistants may make analyses.
- *3913.11. State chemist to give evidence.
- *3913.12. Dealers to post notices.
- *3913.13. Engine distillate excepted.
- *3913.14. Registration of trade name.
- *3913.15. Revocation of license for misrepresentation.
- *3913.16. Definition of misbranding.
- *3913.17. Sampling and employment of inspectors.
- *3913.18. Inspection of measuring devices.
- *3913.19. Cancellation of license—Hearing.
- *3913.20. Penalty.
- *3913.21. Appropriation.
- *3913.22. Effect of partial invalidity act.

CHAPTER 262. REGULATION OF IRRIGATION AND OF WATER RIGHTS— MONTANA IRRIGATION COMMISSION.

- 3947. Creation of commission.

CHAPTER 263. ORGANIZATION AND CONTROL OF IRRIGATION DISTRICTS BY PUBLIC SERVICE COMMISSION.

- *3956. Procedure for organizing irrigation district—Petition—Map—Bond—Examination and report.
- 3958. Hearing of petition—Adjournment—Amendment—Order of court.
- 3960. Meeting of directors—Election secretary—Office.
- 3964. Powers of board of directors.
- *3965. Plan of reclamation—Final report of commission.
- *3968. Bonds—Form and terms—Legal investments.
- *3969. Delivery of bonds to contractor in lieu of sale—Sale of bonds.
- *3970. Payment of bonds—Liability of property—Lien.
- *3973. Sinking fund and tax levy.
- *3974. Determination annual administrative expenses—Levy and collection of tax.
- *3975. Limitations of powers of directors to incur debt.
- 3977. Custodian of funds.
- 3985. Transfer of moneys from construction fund.
- 3986. Transfer of moneys—Powers of directors.
- *3990. Election of directors—Bond—Organization.
- 4014. Inclusion of state lands in irrigation districts.

CHAPTER 265. REGULATION OF REAL ESTATE BROKERS.

- *4056. Commissioner of agriculture real estate commissioner.
- *4061. Disposal of fees.

CHAPTER 266A. REGULATION OF FARM WAREHOUSES.

- *4138.1. Farm warehouses, storage.
- *4138.2. License—Application.
- *4138.3. The holder.
- *4138.4. Warehouse certificates negotiable.
- *4138.5. Inspector—Appointment—Compensation—Bond.
- *4138.6. Duties of warehouse inspector.
- *4138.7. Certificate—Redemption.
- *4138.8. Insurance at full value.
- *4138.9. Co-operative associations not within act.

CHAPTER 267. REGULATION OF TITLE ABSTRACTORS.

- *4143. Renewal of bond annually—Additional bond.

CHAPTER 270. REGULATION OF WAGE BROKERS.

- 4173. Wage broker to procure license and give bond.
- 4175. Wage broker defined.

CHAPTER 273. REGULATION OF SALE OF GASOLINE, KEROSENE AND OILS.

- § 4193-4208. Relating to the regulation of the sale of gasoline, kerosene and oils.
 4208. State gasoline inspection fund.

CHAPTER 276. STANDARD APPLE BOX.

- *4268. Classification and quality of apples.
 *4270. Grades and standards of apples defined.
 *4270.1. Penalty for failure to inspect.
 *4272. Penalty for violation of act.

CHAPTER 278. TIME.

4280. The week.

PART IV. GOVERNMENT OF COUNTIES, CITIES AND TOWNS.

CHAPTER 1. DEFINITIONS, COURSES AND SURVEYS.

4293. County defined.
 4304. Collection of old taxes when county is divided or boundary altered.

CHAPTER 2. COUNTY BOUNDARIES.

- *4318. Fergus county.
 *4327. Judith Basin county.
 *4327.1. Boundaries of Lake county.
 *4337.1. Petroleum county.
 *4358.1. Establishment of boundary line between Yellowstone and Carbon counties.
 *4358.2. Alteration boundaries of Yellowstone County.

CHAPTER 4. LOCATION OF COUNTY SEATS.

4386. Canvass of returns—Result of election.

CHAPTER 5. CREATION OF NEW COUNTIES BY PETITION AND ELECTION.

4390. Creation of new counties—Debts and assets prorated.
 4393. Petition for creation of new county—Attached affidavits.
 4394. Duty of commissioners when findings justify new county, etc.
 4395. Measure to be taken after election—Officers—Effect of adverse vote.
 *4396.1. Election of state senator on creation of new county.
 *4396.2. Election of county commissioners on creation of new county.
 4397. Commission to adjust indebtedness of old and new counties.
 4398. Determination of amount of indebtedness and value of property—Taxation.
 4400. Assessment and collection of taxes.
 *4402. Records, books and papers.
 *4403. Transfer of pending actions.

CHAPTER 8. GENERAL POWERS AND LIMITATIONS UPON COUNTIES.

4441. Every county a body corporate.
 4444. Enumeration of powers.

CHAPTER 9. COUNTY COMMISSIONERS—ORGANIZATION, MEETINGS AND COMPENSATION.

4459. Clerk.
 4460. Duties of clerk.
 4461. Duties of board.

CHAPTER 10. GENERAL POWERS OF BOARDS OF COUNTY COMMISSIONERS.

- *4465. General and permanent powers.
 *4465.1. Grant of right of way for pipe-line construction—Damages.
 *4465.2. Proviso.

CHAPTER 11. SPECIAL POWERS AND DUTIES OF COUNTY COMMISSIONERS.

- 4470A, 4470B. Relating to appropriations for county advertising.
 *4470.1. Appropriation for county advertising authorized.
 *4470.2. Amount of appropriation.

- § 4482. Contracts for county printing—Duty of county commissioners to enter into.
4501. Destruction of insect pests by county commissioners.
- *4502. Pay of workers—Affidavit—Claims.
- *4503. Purchase and payment for equipment.
- *4504. Tax levy—Registry warrants.
- *4508. Seed commissioner—Employment.
- *4509. Inspection and notice to owner.
- *4510. Service of notice.
- *4511. Procedure to enforce notice—Tax levy—Suit.
- *4512. Weeds in crops—Procedure.
4520. Liability on official bond of commissioner.

CHAPTER 11A. SPECIAL POWERS OF COUNTY COMMISSIONERS—ROUNDUP OF ABANDONED HORSES.

- *4520.1. Definition of terms.
- *4520.2. Abandoned horses declared nuisances.
- *4520.3. Roundups authorized—Procedure.
- *4520.4. Notice of roundup—How given.
- *4520.5. Supervision of roundups—Bond of foreman.
- *4520.6. Owner may claim horses.
- *4520.7. Proof of ownership—Fees.
- *4520.8. Notice and time of sale—Title of purchaser.
- *4520.9. Assessment of horses.
- *4520.10. Disposal of moneys.
- *4520.11. Record of foreman—Filing.
- *4520.12. Disposal abandoned horse fund.
- *4520.13. Liability of officers.
- *4520.14. Certain roundups by individuals prohibited.
- *4520.15. Limitation of act.
- *4520.16. Effect of partial invalidity of act.

CHAPTER 12. CARE OF THE COUNTY POOR—OLD AGE PENSIONS.

- *4527. Contract for medicines and medical attendance.
- *4541.1. Creation of old age pension commission.
- *4541.2. Duties and meetings.
- *4541.3. Who entitled to pension.
- *4541.4. Amount of pension.
- *4541.5. Necessary qualifications of applicants.
- *4541.6. Other limitations—Refund on death of pensioner.
- *4541.7. Annual income, how computed.
- *4541.8. Claims, how made.
- *4541.9. Certificates and renewal.
- *4541.10. Commencement and payment.
- *4541.11. Cancellation of pension.
- *4541.12. Funeral expenses—Payment.
- *4541.13. Other relief forbidden.
- *4541.14. Alienation of pension forbidden.
- *4541.15. Suspension of pension improperly obtained.
- *4541.16. Penalty for false statements, etc.
- *4541.17. Penalty generally.
- *4541.18. Cancellation of certificate.
- *4541.19. Suspension of payments, when.
- *4541.20. Counties to pay pension and expenses.
- *4541.21. Annual report of commission.
- *4541.22. Procedure, how regulated.
- *4541.23. Effect of amendment or repeal.
- *4541.24. Gender of terms.
- *4541.25. Title of act.

CHAPTER 14. COUNTY FAIRS.

- *4545. County fair commission—Appointment.
- *4549. Appropriation and tax levy for county fairs.

CHAPTER 15. BOXING AND WRESTLING MATCHES—STATE ATHLETIC COMMISSION.

- *4551. Creation of state athletic commission.
- *4552. Secretary—Appointment—Expenses—Reports.

- § 4553. Duty of secretary of county athletic commission.
- *4554. Authority of commission—Licenses.
- *4555. Regulation of buildings.
- *4556. Regulation of bouts.
- *4557. Fake bouts prohibited—Penalty.
- *4558. Penalty for fake boxing.
- *4559. Clubs to pay tax—Veterans' memorial fund.
- *4560. Bond.
- *4561. Penalty for failure to report or pay tax.
- *4562. Penalty.
- *4562½. Transfer moneys to veterans' memorial fund.

CHAPTER 16. COUNTY FREE LIBRARIES.

- *4565. County librarian—Appointment—Compensation.

CHAPTER 17. RURAL IMPROVEMENT DISTRICTS.

- 4575. Resolution of intention—Publication, mailing and notice.
- 4577. Protests against creation or extension of district—Hearing.
- 4578. Jurisdiction attaches, when—Resolution creating district.
- 4584. Assessment of property—Apportionment of costs—Railroads.
- 4585. Federal property omitted from assessment.
- 4595. County treasurer to collect assessments.

CHAPTER 18. CLAIMS AGAINST COUNTIES—COUNTY WARRANTS.

- 4605. All claims must be itemized.
- 4610. Appeals.
- 4612. Warrants—Specification—Presentation and payment.

CHAPTER 19. COUNTY FINANCES, BONDS AND WARRANTS.

- *4614. Refunding bonds.
- *4622. Tax—Bond fund.
- *4622.1. Bond sinking funds—How invested.
- 4625. County warrants—Interest.
- 4631. County commissioners to transfer funds.
- *4632. Petty cash fund.
- *4633. Surplus of contingent fund.
- *4639.1. Public bonds—Issuance on amortization plan.
- *4639.2. Definition of terms.
- *4639.3. Consideration of bids—Kind of bonds.
- *4639.4. Notice of sale—Contents.
- *4639.5. Copy of notice to register state land.
- *4639.6. Investment of county money in county warrants authorized.

CHAPTER 21. INDEBTEDNESS FOR GENERAL DROUGHT RELIEF.

- 4700. Application for relief—Contents.

CHAPTER 23. QUESTION OF RAISING MONEY TO BE SUBMITTED TO A VOTE.

- 4717. Commissioners not to borrow money except as herein provided.

CHAPTER 24. COUNTY OFFICERS—ENUMERATION, QUALIFICATIONS, BONDS AND GENERAL PROVISIONS.

- 4731. County and township officers may generally appoint deputies at discretion.
- 4735. Keep office at county seat.
- 4736. What offices to be kept open at county seat.
- 4749. Penalties.

CHAPTER 25. COUNTY TREASURER.

- 4750. Duties of county treasurer.
- *4751. County treasurer to issue triplicate receipts.
- 4753. Registry of warrants—Interest.
- 4754. Notice of redemption of warrants.
- 4755. What it must state and how published.

- § 4756. Priority in payment of warrants.
- 4758. Funds reserved sixty days therefor.
- 4761. Report to board of commissioners each session.
- *4767. Deposit of public funds.

CHAPTER 26. SHERIFF.

- *4774. Duties of sheriff.
- 4779. Return of prima facie evidence.
- 4781. Liability for refusing to levy or sell.
- 4782. Damages for refusing to pay over money.
- 4788. When sheriff justified in executing process.

CHAPTER 27. COUNTY CLERK.

- 4796. What to be recorded.
- 4799. Indexes to be kept.
- *4811. Duties of the county clerk.
- *4814. Annual report of county clerk.
- *4814.1. Warrant of county clerk to be withheld.

CHAPTER 28. CLERK OF THE DISTRICT COURT.

- 4815. Duties and records to be kept.
- *4818.1. Index books for bonds in criminal cases.

CHAPTER 29. COUNTY ATTORNEY.

- 4819. Duties of county attorney.
- 4820. Legal advisor of board of county commissioners.
- 4821. Authority to sue to recover money illegally paid.
- 4822. Must not act as attorney for claims against his own county.

CHAPTER 30. COUNTY AUDITOR.

- *4824. County auditor—In what class counties chosen.
- *4824.1. Duties, how performed in counties below fifth class.
- 4830. Must audit and investigate claims.

CHAPTER 35. SALARIES AND FEES OF COUNTY OFFICERS AND DEPUTIES,
JURORS AND WITNESSES.

- *4864. Disposition of fees of county officers.
- *4868. Salaries, how paid.
- *4874. Deputies and assistants to county officers—Number and salary, how fixed.
- 4875. Number of deputies allowed.
- 4878. Extra deputies for county officers.
- 4880. Maximum number of deputy treasurers, auditors and county attorneys.
- *4884.1. Mileage of public officers when using private automobile.
- 4886. Fees for board of prisoners.
- 4887. Fees must be paid into county treasury, when.
- 4893. No fees to be charged state, county or public officer.
- 4903. Certificate of clerk to witness.
- *4916. Fees of sheriff.
- 4936. Witnesses' fees.
- *4944. Witnesses may demand advance fees, when.

CHAPTER 36. OTHER COUNTY CHARGES.

- 4952. Enumeration of county charges.

CHAPTER 37. GENERAL POWERS OF CITIES AND TOWNS.

- 4955. General powers.

CHAPTER 40. ADDITIONS TO CITIES AND TOWNS.

- *4978. Cities or towns of the first class.
- *4979.1. City boundaries, how altered—Exclusion of territory.
- *4979.2. Petition for exclusion—Notice—Action.
- *4979.3. Filing of resolution and map.

- § *4979.4. Liability of excluded territory.
- *4979.5 Jurisdiction for taxation retained.

CHAPTER 42. OFFICERS AND ELECTIONS.

- 5007. Who eligible.
- 5010. Qualifications of electors.
- 5015. Vacancies—How filled.

CHAPTER 43. EXECUTIVE POWERS—STATEMENT OF CITY CLERK.

- *5030. Powers of mayor.
- *5033.1. Financial statement of city clerk.
- 5034. Duties of city treasurer.
- 5036. Security for deposits, how given—Statements of banks.
- 5038. Qualifications, term of office and duties of city attorney.

CHAPTER 44. LEGISLATIVE POWERS—GENERAL AND SPECIAL POWERS OF CITY AND TOWN COUNCILS.

- *5039. Powers of city councils.
- *5039.1. Licensing soft-drink establishments and pool and billiard halls.
- *5039.2. Municipalities authorized to furnish water to outside industries.
- *5039.3. Issuance of city bonds to acquire natural gas authorized.
- 5043. Organized cities and towns authorized to take by gift, donation, devise, etc.
- *5044.1. Certain municipalities and institutions may receive gifts, etc.
- *5044.2. Other statutes applicable.
- 5056. Ordinances—How prepared.

CHAPTER 45. MUNICIPAL CONTRACTS AND FRANCHISES.

- *5070. Awarding contracts.

CHAPTER 47. LIABILITY OF CITIES AND TOWNS FOR NEGLIGENCE.

- *5086.1. Nonliability of cities for certain negligence.

CHAPTER 48. JUDICIAL POWERS—POLICE COURTS.

- 5092. Proceedings in criminal actions.

CHAPTER 49. POLICE DEPARTMENT.

- 5095. Police department.
- *5096.1. Age qualifications of policemen.
- *5096.2. Period of service—Police reserve.
- *5096.3. Retired list—Emergency call.
- *5096.4. Disability.
- *5096.5. Salary.
- *5096.6. Salary and expenses during illness.
- *5096.7. Tax levy for payment of salaries.
- *5096.8. Cities, how admitted.
- *5096.9. Deductions from monthly pay.
- *5096.10. Disposal of moneys withheld from salaries, gifts, etc.
- *5097. Terms of members of police force—Appointments, how made.
- *5098. Police commissioner—Appointment—Term—Compensation.
- *5099. Examination of applicants for position on police force.
- *5100. Presentation and trials of charges against policemen.
- *5101. Defining active and eligible list of officers.
- *5106. Qualifications of police officers.

CHAPTER 50. FIRE DEPARTMENT—FIREMEN'S DISABILITY FUND.

- 5109. Council may establish fire department.
- 5111. Powers of mayor to suspend firemen.
- *5116.1. Levy for volunteer fire departments.
- *5117. Disability and pension fund.
- *5118. Source of fund.
- *5119. Tax levy for fund.
- *5120. Board of trustees.
- *5121. Duties of trustees.

- § 5122. Use of fire department, disability fund.
- *5123. Benefits, allowed for, how allowed, and how paid.
- *5124. Embezzlement of funds.
- *5126. Reports of insurance companies.
- *5127. State auditor to pay cities and towns fifty per centum (50%) of licenses collected.
- *5128. State treasurer to pay warrants.
- *5129. Fire department relief association.
- *5130. Report of secretary and treasurer of fire department's relief association, examination of books and accounts.
- *5131. Duties of association and city treasurers.
- *5132. Pensions to retired firemen.
- *5133. Payment of service pension.
- *5134. Pension to widows and orphans.
- *5135. Use of disability and pension fund of fire department relief association.
- *5135.1. Effect of decision holding any part of act unconstitutional.
- *5138. Hours of work of members of fire department in cities of first and second class.

CHAPTER 51. FIRE PROTECTION IN UNINCORPORATED TOWNS.

- 5143. Fire companies—How organized.
- 5148. Fire protection—Establishment of fire districts.
- *5148A. Establishment of fire limits within unincorporated towns.
- *5149. Directors of fire districts—Issuance of bonds.
- *5150. Conduct of election—Voting—Bonds.

CHAPTER 52. PUBLIC PARKS AND PLAYGROUNDS.

- *5159. Public parks and grounds—Additional indebtedness of municipalities to provide.

CHAPTER 53A. DISPOSAL OF IMPOUNDED ANIMALS.

- *5176. Contents of notice.

CHAPTER 55. TAXATION AND LICENSES.

- *5194. Amount of tax for municipal purposes—Distribution of funds—Levy for park purposes.
- 5195. Cities and towns may raise money by taxation in excess of levy now permitted, how.
- 5200. Special taxes and assessments.
- *5201. Taxes in cities which have exceeded the constitutional limit of indebtedness.
- 5203. Annual tax—Equalization and collection.
- 5214. Collection of taxes—Delinquent taxes.
- 5215. Duties of city treasurer.
- 5215.1. Certification of delinquent special improvement taxes to treasurer.
- *5216. Annual tax levy.
- *5217. Fiscal year.
- *5218. Annual appropriation ordinance.
- 5224. License tax may be levied.

CHAPTER 56. SPECIAL IMPROVEMENT DISTRICTS—LIGHTING DISTRICTS—STREET SPRINKLING.

- 5226. Special improvement districts—Placing wires underground.
- 5227. Resolution of intention—Notice—Materials.
- *5228. Charges of cost of improvement upon extended district not fronting on street improved.
- *5229. Protests against proposed work.
- 5230. Jurisdiction to order proposed improvements.
- *5238. Methods for payment of improvements.
- *5238.1. Inclusion of unplatted lands in special improvement district.
- 5239. Sewer systems.
- 5240. Assessment to pay cost of improvements.
- 5249. Form of bonds and warrants.
- *5250. Payment under contracts.
- *5251. Certification and collection of special assessments in cities and towns.
- 5257. Posting and publication of notices by clerk—Effect of errors in proceedings.

- § 5259. Special improvement districts for lighting streets.
- *5260. Proportion to be borne by abutting property.
- *5261. Resolution of intention—Procedure.
- *5265. Resolution assessing cost—Notice—Hearing.
- *5266. Contract for maintenance—Assessments.
- *5269. Petition for discontinuance of district.
- *5271. United States lands excepted.
- *5272. Street sprinkling.
- *5276. Same—Method of assessment.

CHAPTER 57. MUNICIPAL BONDS—FUNDING DEBT.

- 5278. Creation of indebtedness—Submission to taxpayers.
- 5283. Tax for interest and sinking fund—Place of payment.
- *5285. Funded debt.

CHAPTER 63. COMMISSION FORM OF GOVERNMENT.

- 5373. Laws governing city—Ordinances—Territorial limits and property.
- 5380. City to be governed by mayor and councilmen.
- 5384. Supervisory powers of mayor and councilmen—Election and removal of officers—Police judge.
- 5390. Civil service.

CHAPTER 64. COMMISSION-MANAGER PLAN OF GOVERNMENT.

- *5404. Mayor to transmit certificate.
- *5405. Special election—Proclamation and calling.
- 5409. Powers of municipalities under commission-manager plan.
- *5411. Terms of office of commissioners—Elections, when held.
- *5413. Qualifications of commissioners—Forfeitures of office—Limitations.
- *5415. Ballots—Form—Voting—Qualifications of voters—Challenges—Returns.
- *5418. Candidate's expense accounts—Penalties.
- *5442. Preliminary authority of commissioners—Qualifications of voters.
- *5443. Commissioner's oath and bond—Premium.
- *5444. Mayor—Duties—Vacancies—Procedure on tie vote.
- *5448. Meetings of commissioners—Absences.
- *5449. Ordinances and resolutions—Form and passage.
- *5465. Department of public safety.
- *5466. Duties of the department and director of finance—Department of finance.
- *5470. Police judge.
- *5471. Civil service board—Appointment and organization.
- *5487. Plat of lots—Survey and filing.
- *5502. Fiscal year—Submission of budget.
- *5503. Appropriation ordinance—Details concerning.
- *5507. Determination of salaries of city manager and employees.
- *5515. Laws continued in force.
- *5516. Exceptions to repealing clause.

CHAPTER 64A. MERGER OF COUNTY AND CITY GOVERNMENT.

- *5520.1. Merger of county and city government authorized.
- *5520.2. Question, how submitted.
- *5520.3. Form and certification of petition—Special election.
- *5520.4. Form of ballots.
- *5520.5. Special election—Proclamation—Nominations.
- *5520.6. Powers of consolidated municipality.
- *5520.7. Commission—Number—Term—Vacancies—Qualifications.
- *5520.8. Meetings and organization of commission.
- *5520.9. Commission to make rules—Expulsion of members.
- *5520.10. Election of officers—Powers of president.
- *5520.11. Director of finance clerk—Powers.
- *5520.12. Quorum and voting.
- *5520.13. Compensation of commissioners—Compulsory attendance.
- *5520.14. Ordinances, how enacted.
- *5520.15. Publication of ordinances.
- *5520.16. Ordinances, how revised.
- *5520.17. Ordinances, effective date—Emergencies—Submission to freeholders.
- *5520.18. Recording and publication of ordinances.
- *5520.19. Submission of ordinances by petition.
- *5520.20. Initiative petitions, submissions of.

- § *5520.21. Changes in proposed ordinance—Submission to voters.
- *5520.22. Certification by clerk—Submission to electors.
- *5520.23. Effective date of initiative ordinances.
- *5520.24. Initiative repealing of ordinances.
- *5520.25. Submission of ordinances to electors—Referendum petitions—Suspensions.
- *5520.26. Certification of petitions—Reconsideration of ordinances—Submission to voters.
- *5520.27. Ballot title—Voting.
- *5520.28. Preliminary acts.
- *5520.29. Signatures to petitions—Form of affidavit.
- *5520.30. Filing and certification of petitions.
- *5520.31. Amendment of petitions.
- *5520.32. Manager—Appointment—Powers—Compensation—Removal.
- *5520.33. Appointment of officers by manager.
- *5520.34. Removal of officers—Procedure.
- *5520.35. Control of administrative service.
- *5520.36. General duties of manager.
- *5520.37. Who to attend sessions of commission.
- *5520.38. Enumeration of departments—Changes.
- *5520.39. Employees, how regulated.
- *5520.40. List of employees—Payment of salaries—Recovery.
- *5520.41. Compensation of employees—Schedules.
- *5520.42. Advisory board—Compensation—Meetings.
- *5520.43. Investigation of affairs of municipality—Service of subpoenas.
- *5520.44. Department of law—Duties of director.
- *5520.45. Director of finance—Powers.
- *5520.46. Director of finance—Duties as to revenue and expenses.
- *5520.47. Division of audit and account.
- *5520.48. Officer's accounts to be audited, when.
- *5520.49. Division of the treasury.
- *5520.50. Division of purchases and supplies—Purchasing agent.
- *5520.51. Supplies, how purchased—Limitations.
- *5520.52. Division of assessment.
- *5520.53. Powers of assessor.
- *5520.54. Fiscal year.
- *5520.55. Limitation on tax levy.
- *5520.56. Tax limit.
- *5520.57. Special tax levy.
- *5520.57A. Designation of districts—Tax.
- *5520.58. Collection of taxes.
- *5520.59. Continuation of special districts—Special tax levies.
- *5520.60. Claims—Vouchers—Issuance of warrants.
- *5520.61. Examination of claims—Liability of director.
- *5520.62. Certification of certain contracts.
- *5520.63. Contracts, when void.
- *5520.64. Depositories—Bonds.
- *5520.65. Deposit of securities—Interest.
- *5520.66. New bonds, when required.
- *5520.67. Surety bonds—Record of securities.
- *5520.68. Deposit of funds.
- *5520.69. Interest on deposits.
- *5520.70. Disbursement of moneys by check.
- *5520.71. Liability of treasurer and sureties.
- *5520.72. Limitation of indebtedness.
- *5520.73. Borrowing money.
- *5520.74. Sinking fund board—Investment of sinking funds.
- *5520.75. Letting of contracts—Advertising—Execution.
- *5520.76. Alteration of contracts.
- *5520.77. Police department—Director—Officers.
- *5520.78. Director of public works—Powers and duties.
- *5520.79. Director of public works—Qualifications.
- *5520.80. Director of department of public health—Powers.
- *5520.81. Commission county board of health.
- *5520.82. Fire department chief.
- *5520.83. Firemen's disability funds.
- *5520.84. Municipal superintendent of schools—Compensation—Powers.
- *5520.85. Police court and judge.
- *5520.86. Public works, how constructed.
- *5520.87. Special improvement districts.
- *5520.88. Control of public works—Special improvement districts.

- § *5520.89. First election—What officers to act.
- *5520.90. Municipal primary elections—Polls—Voting.
- *5520.91. Nominating petitions—Signatures.
- *5520.92. Form of petitions.
- *5520.93. Assembling and filing petitions—Notification of nominees.
- *5520.94. Party marks forbidden—Form of ballot.
- *5520.95. Determination of order of names on ballot.
- *5520.96. Names may be written on ballot.
- *5520.97. Notice of primary election—Publication.
- *5520.98. Names, how placed on ballot.
- *5520.99. Removal of commissioner by recall.
- *5520.100. Recall petitions—Return and filing.
- *5520.101. Election on recall petition.
- *5520.102. Questions to be submitted on recall—Nomination candidates.
- *5520.103. Use of voting machines prohibited—Form of ballot.
- *5520.104. Effect of recall election.
- *5520.105. Resignation pending election.
- *5520.106. Limitation on recall petitions.
- *5520.107. Officer's perquisites—Limitations.
- *5520.108. Political solicitation prohibited.
- *5520.109. Other political activities prohibited.
- *5520.110. Penalty.
- *5520.111. Commissioner to hold no other office.
- *5520.112. Bonds of commissioner and other officers.
- *5520.113. Oath of office.
- *5520.114. Interest of officers in contracts prohibited.
- *5520.115. Existing contracts continued.
- *5520.116. Continuation of existing ordinances.
- *5520.117. Temporary continuation of existing officers.
- *5520.118. Official declarations—Merger, when effective—Legal status of municipality.
- *5520.119. Transfers authorized.
- *5520.120. Effect of partial invalidity of act.

CHAPTER 64B. CITY AND COUNTY OF BUTTE.

- *5520.121. Scope of act.
- *5520.122. Powers.
- *5520.123. The commission.
- *5520.124. Meetings.
- *5520.125. Powers of commission.
- *5520.126. President—Election and powers.
- *5520.127. Duties of director of finance.
- *5520.128. Quorum and voting.
- *5520.129. Compensation and mileage of commissioners—Absences.
- *5520.130. Ordinances—Regulation of.
- *5520.131. Publication of ordinances.
- *5520.132. Ordinances, how revised.
- *5520.133. Effective date of ordinances—Emergency measures.
- *5520.134. Recording and authentication of ordinances.
- *5520.135. The initiative.
- *5520.136. Certification and submission of initiative petitions.
- *5520.137. Submission of ordinances to electors.
- *5520.138. Time for submission.
- *5520.139. Submission of amended ordinances.
- *5520.140. Submission of repealing ordinances.
- *5520.141. The referendum.
- *5520.142. Certification of petitions—Reconsideration—Submission.
- *5520.143. Ballot title—Voting.
- *5520.144. Preliminary acts.
- *5520.145. Initiative referendum and recall petition.
- *5520.146. Assembling, certification and filing of papers.
- *5520.147. Amendment of petition.
- *5520.148. Administrative service—Appointment and removal of manager.
- *5520.149. Responsibility of manager—Appointments.
- *5520.150. Procedure for removal or suspension of officers or employees.
- *5520.151. Restrictions on power of commission.
- *5520.152. Duties of manager.
- *5520.153. Who entitled to be present at meetings.
- *5520.154. Departments—Control by commission.
- *5520.156. List of employees—Duty of treasurer.

- § *5520.157. Compensation of officers and employees—Schedules.
- *5520.158. Citizens' advisory board.
- *5520.159. Investigation of departments—Subpoenas.
- *5520.160. Department of law—Attorney, salary and duties.
- *5520.161. Director of finance—Powers and duties.
- *5520.162. Statement of revenues.
- *5520.163. Division of audit and account.
- *5520.164. Audit of books of officers, when made—Suits to recover.
- *5520.165. Division of treasury.
- *5520.166. Purchasing agent.
- *5520.167. Supplies, how purchased.
- *5520.168. Assessor—Election—Qualifications—Duties—Salary.
- *5520.169. Tax maps.
- *5520.170. Duties of assessor as to special assessments.
- *5520.171. Financial procedure—Budget.
- *5520.172. Appropriation ordinance.
- *5520.173. Tax levy.
- *5520.174. Limitation on tax levy.
- *5520.175. Special districts—Limitation on taxes.
- *5520.176. Tax limits, application of.
- *5520.177. Collection of taxes.
- *5520.178. Continuation of existing districts—Tax levy for.
- *5520.179. Effect of general tax laws.
- *5520.180. Transfer of balances.
- *5520.181. Money, how drawn from treasury—Reversion of balances.
- *5520.182. Accounts to be kept.
- *5520.183. Claims, how paid.
- *5520.184. Examination of pay-rolls.
- *5520.185. Certification of director before making contracts.
- *5520.186. What to be credited to appropriations.
- *5520.187. Contracts, when void.
- *5520.188. Designation of depositories—Bonds.
- *5520.189. Deposit of securities—Interest.
- *5520.190. New bonds, when required.
- *5520.191. Continuation of security.
- *5520.192. Deposit of funds.
- *5520.193. Interest on daily balances.
- *5520.194. Payments by check.
- *5520.195. Liability of treasurer.
- *5520.196. Limitation on indebtedness.
- *5520.197. Procedure to borrow money—Funding obligations.
- *5520.198. Appropriations for sinking fund.
- *5520.199. Sinking fund board—Appointment and powers.
- *5520.200. Award of contracts—Advertisement.
- *5520.201. Alteration in contracts.
- *5520.202. Police department—Director, powers, duties and salary
- *5520.203. Department of public works—Director.
- *5520.204. Qualifications and powers.
- *5520.205. Department of health.
- *5520.206. County board of health.
- *5520.207. Fire department.
- *5520.208. Continuation of firemen's disability funds.
- *5520.209. Superintendent of schools.
- *5520.210. Police court and police judge.
- *5520.211. Public work and improvements.
- *5520.212. Creation of special improvement districts—Procedure.
- *5520.213. Report.
- *5520.214. Notice to property owners.
- *5520.215. General laws applicable.
- *5520.216. Powers and duties of officers before and after adoption of act.
- *5520.217. Electoral board—Precincts—Judges—Conduct of elections.
- *5520.218. Municipal primary elections.
- *5520.219. Nominations by petition—Affidavits.
- *5520.220. Form of nominating petition.
- *5520.221. Filing papers—Notice to nominee.
- *5520.222. Party designation forbidden.
- *5520.223. Order of names of candidates.
- *5520.224. Voter may write names on ballot.
- *5520.225. Publication of notices of election.
- *5520.226. Elections—Contents of ballot—Tie vote.

- § *5520.227. The recall.
- *5520.228. Return and filing of petition.
- *5520.229. Submission of petition—Election.
- *5520.230. Submission of two or more recalls.
- *5520.231. Form of ballot—Prohibition of use of voting machines.
- *5520.232. Effect of election.
- *5520.233. Effect of resignation.
- *5520.234. Limitation as to time of recall.
- *5520.235. Special perquisites forbidden.
- *5520.236. Political solicitation prohibited.
- *5520.237. Other restrictions on officers.
- *5520.238. Penalties.
- *5520.239. Restrictions on commissioners.
- *5526.240. Board of equalization.
- *5520.241. Bonds required—Payment of premiums.
- *5520.242. Oath of office.
- *5520.243. Interest of officers in contracts forbidden.
- *5520.244. Existing contracts continued.
- *5520.245. Existing ordinances continued.
- *5520.246. Duties of officers to commence and cease when.
- *5520.247. General regulations for effecting transfer and collecting taxes on consolidation.
- *5520.248. Transition of government—Regulation of.
- *5520.249. Submission of act to electors.
- *5520.250. Form of ballot.
- *5520.251. Effect of election.
- *5520.252. Effect of partial invalidity of act—Proviso.

PART V. THE ENACTMENT, REVISION, PUBLICATION AND EFFECT OF THE CODES.

CHAPTER 1. THE ENACTMENT AND EFFECT OF THE CODES.

- 5522. Construction of the codes with relation to each other.
- 5528. When codes go into effect.

CHAPTER 2A. ADOPTION OF REVISED CODES OF 1921.

- *5546.1. Adoption of Revised Codes of 1921.
- *5546.2. Changes legalized.
- *5546.3. Exception.

PART VI. LOCAL AND SPECIAL LAWS.

CHAPTER 5. EDUCATIONAL BONDS.

- 5606. Educational bonds authorized.

CHAPTER 6. THREE MILLION DOLLARS TREASURY CERTIFICATES.

- 5615. Preamble—Authorization of three million dollars treasury certificates.

CHAPTER 6A. TREASURY NOTES.

- *5623.1. Preamble.
- *5623.2. Series and interest.
- *5623.3. Form and registry.
- *5623.4. Disposal of notes.
- *5623.5. Where and how payable.
- *5623.6. Treasury note redemption fund.
- *5623.7. Place of payment.
- *5623.8. Appropriation.

CHAPTER 9. PREFERENTIAL EMPLOYMENT OF SOLDIERS AND SAILORS— SOLDIER BONUS.

- *5653. Preference of soldiers and sailors in public employment.

CIVIL CODE.**PART I. THE DEFINITION AND SOURCES OF THE LAW.****CHAPTER 1. LAW—THE CONSTITUTION, STATUTES AND COMMON LAWS.**

§ 5672. Common law, when rule of decision.

PART II. PERSONS AND PERSONAL RELATIONS.**CHAPTER 1. PERSONS—MINORS, ADULTS AND PERSONS OF UNSOUND MIND.**

- 5673. Minors and adults defined.
- 5680. When minors may disaffirm.
- 5681. Minor or person of unsound mind cannot disaffirm contract for necessities.
- 5683. Contracts of persons without understanding.
- 5684. Contracts of other persons of unsound mind.
- 5685. Power of persons whose incapacity has been adjudged—Effect of certificate of discharge from asylum.

CHAPTER 2. PERSONAL RIGHTS—LIBEL AND SLANDER—PROTECTION TO PERSONAL RELATIONS.

- 5690. Libel defined.
- 5692. What communications are privileged.

CHAPTER 3. PERSONAL RELATIONS—MARRIAGE, HOW CONTRACTED AND AUTHENTICATED.

- 5695. What constitutes marriage.
- 5697. Marriage—How manifested and proved.
- 5724. Declaration of marriage—How made.
- 5725. Contents of declaration.

CHAPTER 5. DISSOLUTION OF MARRIAGE—DIVORCE.

- 5734. Marriage—How dissolved.
- 5736. Causes for divorce.
- 5738. Extreme cruelty defined.
- 5743. Consent to separation revocable.
- 5745. Husband may select home.
- 5747. Wilful neglect, what constitutes.
- 5766. Period of residence required to entitle plaintiff to divorce.
- 5767. Divorce not granted by default alone, etc.
- 5768. Relief may be adjudged, when divorce is denied.
- 5769. Expenses of action—Alimony.
- 5770. Orders respecting custody of children.
- 5771. Support of wife and children on divorce or separation granted to wife.
- 5772. Security for maintenance and alimony.

CHAPTER 6. HUSBAND AND WIFE.

- 5783. Rights of husband as head of family.
- 5784. Duties of husband to wife as to support.
- 5786. Husband and wife may make contracts.
- 5787. Extent to which their legal relation may be altered by contract—Separation agreement.
- 5792. Separate property of wife.
- 5793. Inventory of separate property of wife.
- 5794. Effect of filing inventory.
- 5797. Work and labor of wife.
- 5799. Separate property of wife—How far liable.
- 5800. Support of wife.
- 5803. Rights of husband and wife—How governed.

CHAPTER 7. DOWER.

- 5813. Dower.
- 5818. Absent wife need not sign deed.
- 5819. Widow may elect.
- 5821. Rights of widow when no issue.
- 5824. Antenuptial settlement—When a bar to dower.
- 5825. Assent to marriage settlement.

CHAPTER 8. PARENT AND CHILD—CHILDREN BY BIRTH AND BY ADOPTION.

- § 5830. Legitimacy of children born in wedlock.
- 5832. Who may dispute the legitimacy of a child.
- 5834. Custody of legitimate child.
- 5837. Custody of illegitimate child.
- 5841. When parental authority ceases.
- 5846. Husband not bound for the support of his wife's children by a former marriage.
- 5856. Who may adopt minor child.
- 5859. Consent of child's parent.
- 5863. Effect of adoption.

CHAPTER 9. GUARDIAN AND WARD.

- 5878. Rules of awarding custody of minors.
- 5881. Duties of guardian of estate.
- 5888. Released by ward.

PART III. CORPORATIONS.

CHAPTER 1. THE CREATION OF PRIVATE CORPORATIONS.

- 5901. What are public and what private corporations.
- 5905. Articles of incorporation—What to contain.
- 5909. Filing articles of incorporation.
- *5916.1. Continuous succession certain corporations authorized.
- *5916.2. Certificate to be filed with county clerk.

CHAPTER 2. CHANGES IN CORPORATE ORGANIZATION AND MANAGEMENT.

- *5918. Amendment of articles of incorporation.
- *5926. Extension of term of corporate existence.
- 5929. Procedure to create or increase bonded indebtedness of corporation.

CHAPTER 3. BY-LAWS.

- 5930. By laws, adoption of—When, how, and by whom.
- 5931. By-laws—May provide for what.
- 5932. By-laws, recording and amendment of.

CHAPTER 4. DIRECTORS.

- 5933. Corporate powers and business exercised by board of directors—Number and membership of board—Quorum.
- 5938. Organization of board of directors, etc.
- 5939. Dividends to be made from surplus profits.
- 5942. False certificate, report or notice.
- *5942.1. Authority to change insurance on officers of corporations, how evidenced.

CHAPTER 5. MEETINGS OF STOCKHOLDERS AND DIRECTORS—ELECTIONS.

- 5944. Special meeting—How called.
- 5947. Stock of minors, etc.—How represented.

CHAPTER 6. CORPORATE STOCKS AND THE RIGHTS OF STOCKHOLDERS.

- 5952. Who are members and who are stockholders of corporations.
- 5953. Certificates of stock—How and when issued.
- 5966. Liability of stockholders.

CHAPTER 8. POWERS AND DUTIES OF CORPORATIONS.

- 5994. Powers of corporations.
- 6000. Corporations to organize within one year.
- *6003. Annual statement of corporations.

CHAPTER 9. PROCEDURE FOR SALE OF THE PROPERTY OF A CORPORATION.

- 6004. Procedure for sale, lease, etc., of corporate property.

CHAPTER 10. CORPORATE RECORDS.

§ 6008. Corporate records—To consist of what, and how kept.

CHAPTER 12. SCOPE OF LAW—RIGHT OF LEGISLATURE TO REPEAL.

6013. Chapter and section may be repealed.

CHAPTER 13. BANKS—TRUST AND INVESTMENT COMPANIES—STATE BANKING DEPARTMENT.

6014–6085. Relating to banks—Trust and Investment Companies and the state banking department.

- 6014. Bank act in general.
- 6014.A. Definitions.
- *6014.1. Title and scope of act.
- *6014.2. Institutions to which act is applicable.
- *6014.3. Number of persons necessary to form corporation.
- *6014.4. Definitions of banks, etc.—Commercial bank defined.
- *6014.5. Definition of words and terms.
- *6014.6. Organization and incorporation—Articles of agreement.
- *6014.7. Rejection of certificate by superintendent of banks conclusive.
- *6014.8. Amount of capital.
- *6014.9. Calling of first meeting.
- *6014.10. Board of directors—Qualifications, tenure, and vacancies.
- *6014.11. Director must own not less than one thousand dollars in stock.
- *6014.12. Selection of officers and employees—Meetings and minutes thereof.
- *6014.13. By-laws.
- *6014.14. Increase or diminution of capital stock—Authorized.
- *6014.15. Change of corporate name authorized.
- *6014.16. Change of place of business and number of directors authorized.
- *6014.17. Procedure for carrying into effect the three foregoing sections.
- *6014.18. Certificate of proceedings—Contents and effect.
- *6014.19. Change of board of directors.
- *6014.20. Dissolution and disincorporation.
- *6014.21. Stockholders' liability.
- *6014.22. Transfer of shares of stock.
- *6014.23. Elections—How conducted.
- *6014.24. Investment of capital of savings banks.
- *6014.25. Real estate which banks may purchase, hold or convey.
- *6014.26. Trust companies—Dealing in property and investment of capital.
- *6014.27. Limitation of loan on real estate.
- *6014.28. Banks empowered to join federal reserve bank.
- *6014.29. Business prohibited unless under superintendent of banks.
- *6014.30. Capital stock to be paid up—Superintendent of banks.
- *6014.31. Foreign corporations.
- *6014.32. Advertisement of capital must state amount paid in.
- *6014.33. Keeping of book with list of stockholders.
- *6014.34. Dividends, surplus, losses and bad debts.
- *6014.35. Safe deposit department.
- *6014.36. Purchase or loan of own capital stock prohibited.
- *6014.37. Sale of securities by officer to bank.
- *6014.38. Limit on amount of bond issue.
- *6014.39. Disposition of acquired stock.
- *6014.40. Obtaining property by fraud—False report—Refusal to permit inspection of books.
- *6014.41. Overdraft by officer or employee—Receiving personal profit from loan.
- *6014.42. Waiver of stockholders' liability.
- *6014.43. Purchase of obligation of bank by officer.
- *6014.44. Limitations on loans.
- *6014.45. Loans to managing officer.
- *6014.46. Calculation of profits.
- *6014.47. Certified checks.
- *6014.48. Interest not to exceed lawful rate.
- *6014.49. Joint deposits—Survivorship.
- *6014.50. Trust deposits—Payment.
- *6014.51. Deposit by minor.
- *6014.52. Demand or time deposits.
- *6014.53. Reserve requirements.

- § *6014.54. Borrowed money.
- *6014.55. State banking department.
- *6014.56. State superintendent of banks—Bond.
- *6014.57. State superintendent of banks—Employees.
- *6014.58. Superintendent of banks and employees not to be interested in banks.
- *6014.59. Superintendent of banks—Salary.
- *6014.60. Payment of expenses of superintendent.
- *6014.61. Report to superintendent of banks.
- *6014.62. Report of declaration of dividend.
- *6014.63. Special reports to superintendent of banks.
- *6014.64. Superintendent to call for reports.
- *6014.65. Reports confidential—False reports—Penalties for the violation thereof.
- *6014.66. Penalty for failure to make report within five days.
- *6014.67. False statements and entries deemed felony.
- *6014.68. Assessment on capital stock to make good impairment.
- *6014.69. Penalty for receiving deposits when insolvent, or making false statements.
- *6014.70. Deposits in insolvent bank.
- *6014.71. Examination and supervision.
- *6014.72. Reports and records of superintendent.
- *6014.73. State examiner's fund.
- *6014.74. Acceptance and issuance of drafts and letters of credit.
- *6014.75. Change from state to national bank.
- *6014.76. Surrender of charter by state bank.
- *6014.77. Reduction of capital stock.
- *6014.78. Certificate of change to national bank.
- *6014.79. Reorganization of national banks as state bank.
- *6014.80. Liability of bank paying forged check.
- *6014.81. Presentation of checks—Time for.
- *6014.82. Unincorporated banks—Designation of name.
- *6014.83. Financial condition required of unincorporated bank.
- *6014.84. Private banks subject to inspection by state examiner.
- *6014.85. Information obtained by state examiner to be deemed confidential—Penalty for the violation thereof.
- *6014.86. Report of private bank.
- *6014.87. Receiving deposits by insolvent bank—Making false entries.
- *6014.88. Bank insolvent when.
- *6014.89. Liability on items forwarded.
- *6014.90. Same—What constitutes due diligence.
- *6014.91. Superintendent to make rules and regulations.
- *6014.92. Special examination defined.
- *6014.93. Examination at request of directors.
- *6014.94. Consolidation of banks.
- *6014.95. Taxes on banks which have ceased to do business as banks.
- *6014.96. Attachments prohibited.
- *6014.97. Conversion surplus and undivided profits to capital.
- *6014.98. Superintendent to examine trusts.
- *6014.99. Extent to which assets may be pledged.
- *6014.100. Superintendent to make rules.
- *6014.101. Branch bank prohibited.
- *6014.102. Past due and doubtful paper.
- *6014.103. Reserve—Reports on.
- *6014.104. Payment to foreign administrator.
- *6014.105. Bonding of employees.
- *6014.106. Corporate existence—Cease when.
- *6014.107. Bank advertising before issuance of charter.
- *6014.108. Right of examination by stockholder.
- *6014.109. Removal of directors, officers or employees.
- *6014.110. Borrowing money—Limitations.
- *6014.111. No C. D. to issue for borrowed money.
- *6014.112. Giving security for deposit prohibited.
- *6014.113. Penalty for unlawful hypothecation of assets.
- *6014.114. Concealment of loans and discounts.
- *6014.115. Transaction on holidays.
- *6014.116. Time limit on stop payment.
- *6014.117. Embezzlement.
- *6014.118. False statement to obtain loan.
- *6014.120. Persons previously convicted under banking laws.
- *6014.121. Liquidation of banks—Grounds for closing banks.
- *6014.122. Penalty for closing bank with criminal intent.

- § *6014.123. Bank may be placed in superintendent's possession.
- *6014.124. Effect of posting notice.
- *6014.125. Taking possession of bank—Notice.
- *6014.126. Resumption after closing.
- *6014.127. Powers of superintendent on closing bank.
- *6014.128. Recourse of aggrieved bank.
- *6014.129. Superintendent may appoint agents.
- *6014.130. Compensation of agents and attorneys.
- *6014.131. Notice to creditors of insolvent bank.
- *6014.132. Claims—Allowance and rejection.
- *6014.133. Payment of claims.
- *6014.134. Claims—Order of payment—Priorities.
- *6014.135. Claims—Partial payments.
- *6014.136. Deposit of funds in superintendent's hands.
- *6014.137. Disposition of unclaimed funds.
- *6014.138. Disposition of assets remaining after payment of claims.
- *6014.139. Bank in voluntary liquidation may proceed—How and when.
- *6014.140. Bank liquidating by receivers.
- *6014.141. Effect of act on existing banks.
- *6014.142. Effect of partial invalidity of act.
- *6014.143. Punishment.
- *6014.144. Repealing.
- 6015. Institutions to which act is applicable.
- 6017. Commercial bank defined.
- 6025. Board of directors—Qualifications, tenure, and vacancies.
- 6036. Liability of stockholders.
- 6039. Investment of capital of savings banks.
- 6043. Business prohibited unless under superintendent of banks.
- 6055. Overdraft by officer or employee—Receiving personal profit from loan.
- 6069. Reserve requirements.
- 6071. Report of superintendent of banks.
- 6073. Special reports to superintendent of banks.
- 6075. Reports confidential.
- 6077. False statements and entries deemed felony.
- 6078. Insolvency or impairment of bank.
- 6079. Appointment of receiver.
- *6079.1. Bank insolvencies—Status claims for public deposits.
- 6081. Deposits in insolvent or impaired bank.
- 6082. Penalty for receiving deposits when insolvent, or making false statements.
- 6083. Duties of auditor transferred to superintendent of banks—Examination and supervision.
- 6085. Fees to be credited to state banking fund.
- 6088-6109. Relating to changes in the organization of banks—Reports—Insolvencies and liability of banks.
- 6095. Unincorporated banks—Designation of name.
- 6096. Financial condition required of unincorporated bank.
- 6097. Private banks subject to inspection by state examiner.
- 6098. Information obtained by state examiner to be deemed confidential.
- 6099. Reports of private banks.
- 6100. Report of examiner of impairment of assets of bank.
- 6103. Receiver for bank.
- 6107. Receiving deposits by insolvent bank—Making false entries.
- 6108. Liability of banks on negotiable instruments forwarded for collection.
- 6109. Same—What constitutes due diligence.
- 6109D. Assessment on capital stock to make good impairment.
- 6109E. Voluntary liquidation.

CHAPTER 13A. MORRIS PLAN COMPANIES.

- *6109.1. Definition.
- *6109.2. Procedure to establish Morris Plan Company.
- *6109.3. Contents of certificate of incorporation.
- *6109.4. Population necessary—Capital stock.
- *6109.5. Shares, how divided.
- *6109.6. Name.
- *6109.7. Powers.
- *6109.8. Powers relating to deposits.
- *6109.9. Restrictions on powers.

- § *6109.10. Resident directors.
- *6109.11. Supervision by state banking department.

CHAPTER 14. INSURANCE COMPANIES—GENERAL REGULATIONS.

- 6121. Discrimination prohibited.
- *6124. Commissioner may suspend licenses—General powers.

CHAPTER 18. SURETY COMPANIES.

- 6207. Execution of official bonds.
- 6221. Revocation of license of surety company.
- *6236. What bonds may be furnished—Payment of premium.

CHAPTER 20. LIFE INSURANCE COMPANIES.

- *6258.1. Corporations—Policy-holders to participate in elections.
- *6258.2. Revocation of by-laws, when forbidden.
- *6269. Regulation of investments.
- *6280. Contingency reserve.

CHAPTER 22. FRATERNAL BENEFIT SOCIETIES.

- 6313. Certificate.

CHAPTER 24. BUILDING AND LOAN ASSOCIATIONS.

- 6355-6374. Relating to building and loan associations.
- 6355. Organization of association.
- *6355.1. Purpose—Definition.
- *6355.2. Articles of incorporation—Contents.
- *6355.3. Certified copy of articles prima facie evidence.
- *6355.4. Evidence of corporate existence or capacity.
- *6355.5. By-laws.
- *6355.6. Capital stock defined—Investigation.
- *6355.7. Directors—Duties.
- *6355.8. Removal from office.
- *6355.9. Meetings of stockholders and directors.
- *6355.10. Notice of meetings.
- *6355.11. Proxies.
- *6355.12. Powers and duties of building and loan associations.
- *6355.13. Stockholders.
- *6355.14. Transfer of stock—Effect.
- *6355.15. Requirements of transfer in certain cases.
- *6355.16. Bonds of officers, agents and employees.
- *6355.17. Employment of agents—Licenses and revocation thereof.
- *6355.18. Fund for contingent losses.
- *6355.19. Payment of expenses and losses—Dividends.
- *6355.20. Taxation.
- *6355.21. Annual statements.
- *6355.22. Form of statement—Where filed.
- *6355.23. Duties of superintendent of banks.
- *6355.24. Powers of superintendent of banks.
- *6355.25. Reports—Contents and publication.
- *6355.26. Removal of directors, officers or employees.
- *6355.27. Fees paid into state treasury.
- *6355.28. Application to other persons, corporations, associations, etc.
- *6355.29. Foreign associations—Requirements.
- *6355.30. Consent of agent.
- *6355.31. Contracts void if made before compliance with act.
- *6355.32. Shares of stock subject to attachment.
- *6355.33. Laws of other states.
- *6355.34. Conformity required.
- *6355.35. Penalties.
- *6355.36. Superintendent of banks' report.
- *6355.37. Obtaining property by fraud, false report, refusal to permit inspection of books.
- *6355.38. Purchase of obligations of association by officer.
- *6355.39. Purchase of assets of association by officer.
- *6355.40. Calculation of profits.

- § *6355.41. Limitation on loans.
- *6355.42. Joint ownership.
- *6355.43. Trusts—Payment.
- *6355.44. Shares held by minor.
- *6355.45. Reports confidential.
- *6355.46. Checking accounts prohibited.
- *6355.47. Voluntary liquidation and settlement.
- *6355.48. Insolvency or impairment of building and loan association.
- *6355.49. Fees of secretary of state—Superintendent of banks.
- *6355.50. Repeal.
- *6355.51. Effect of partial invalidity of act.
- 6358. Powers of such corporation.
- 6359. Rights of withdrawing members.
- 6363. Taxation.

CHAPTER 25. CO-OPERATIVE ASSOCIATIONS.

- 6375. Incorporation of co-operative associations.
- 6379. Powers of such associations.

CHAPTER 27. CO-OPERATIVE MARKETING ACT.

- *6445. Annual report.
- *6449.1. Recording marketing agreements.
- *6449.2. Agreements, how executed.
- *6449.3. Where filed.
- *6449.4. Constructive notice of record.
- *6449.5. Record to convey full title when.
- *6449.6. Assignment of security—Record—Acknowledgment.
- *6449.7. Fees—Index.

CHAPTER 29. INCORPORATION OF RELIGIOUS, SOCIAL AND BENEVOLENT CORPORATIONS.

- *6453. Churches, charities, benevolent and fraternal societies.
- *6454. Incorporation of religious or benevolent society.
- *6455. Number of directors—Articles of incorporation—Powers.

CHAPTER 31. CEMETERY ASSOCIATIONS.

- 6469. Formation of association—Trustees.
- 6472. Effect of filing certificate—Powers of corporation—Eminent domain.
- 6485. Funds—To what purposes to be applied.
- 6488. Permanent improvement fund.
- *6489. Trustees of fund—Appointment and powers.
- *6490. Tenure of office of trustees.
- *6492. Vacancies, how filled.
- *6494. Powers of district court.

CHAPTER 32. RAILROAD CORPORATIONS—GENERAL POWERS AND DUTIES.

- 6507. Powers of railroad corporations.
- 6521. Regulations.

CHAPTER 33. LEASES, SALES AND MORTGAGES OF RAILROAD EQUIPMENT AND ROLLING STOCK.

- *6537. Conditional sale of equipment.

CHAPTER 34. LIABILITY OF RAILROADS FOR KILLING OR INJURING LIVESTOCK.

- 6540. Fences and cattle-guards.
- 6541. Liability for injury from negligence.
- 6542. Designation of stations where records are kept.
- 6544. Affidavit of ownership and value—Attorney's fee.

CHAPTER 36. GENERAL REGULATIONS OF BUSINESS OF RAILROADS.

- 6586. Passenger rate of three cents per mile.
- 6595. Obstruction of highway crossings by railroads.

- § 6597. Fire-guards.
 6599. Duty to construct drain and ditches.
 6600. Coal-burning locomotives, skidders, etc., to be provided with spark-arresters.
 6601. Failure to comply with law a misdemeanor—Penalty.
 6605. Liability for death or personal injury.
 6606. Contributory negligence—Diminution of damages.
 6607. Assumption of risk.

CHAPTER 37. RAILROAD CROSSINGS—REGULATION.

6625. Railroad crossings outside of incorporated cities and towns.
 6636. "Railroad company" defined.

CHAPTER 41. FOREIGN CORPORATIONS.

6651. Foreign corporations must file copy of charter and statement.
 6653. Contracts void if made before compliance with act.
 6658. Foreign corporations may exercise power of eminent domain.

PART IV. PROPERTY.

CHAPTER 1. DEFINITIONS AND NATURE OF PROPERTY.

6663. Property, what constitutes.
 6665. Wild animals.
 6667. Real property.
 6668. Land.
 6669. Fixtures.
 6670. Fixtures attached to mines.
 6671. Appurtenances.

CHAPTER 2. OWNERSHIP OF PROPERTY AND INTERESTS THEREIN.

6674. Property of the state.
 6682. Interest in common defined.
 6685. Present interest—To what entitles owner.
 6686. Future interest—To what entitles owner.

CHAPTER 3. CONDITIONS AND LIMITATIONS OF OWNERSHIP.

6707. Leases of agricultural land for over ten years—Exceptions.

CHAPTER 4. REAL PROPERTY AND ESTATES THEREIN.

6722. Real property—How governed.

CHAPTER 5. SERVITUDES.

6749. Servitudes attached to land.
 6750. Servitudes not attached to land.
 6757. Actions by owner and occupant of dominant tenement.
 6759. How extinguished.

CHAPTER 6. RIGHTS INCIDENTAL TO THE OWNERSHIP OF REAL PROPERTY.

6764. Assignee of lessee—Remedies of lessor against.
 6770. Rights of owner.
 6771. Boundaries by water.

CHAPTER 7. OBLIGATIONS INCIDENTAL TO THE OWNERSHIP OF REAL PROPERTY—MONUMENTS AND FENCES.

6776. Duties of tenant for life.
 6777. Monuments and fences.
 6778. Partition fences.
 6780. Fence when joint occupancy ceases.

CHAPTER 8. USES AND TRUSTS IN RELATION TO REAL PROPERTY.

6784. Trusts must be in writing.
 6785. Transfer to one for money paid by another.
 6789. Vested power, execution of.

CHAPTER 10. PERSONAL PROPERTY—LAW GOVERNING—KINDS OF PERSONAL PROPERTY.

§ 6804. Things in action defined.

CHAPTER 11. ACQUISITION OF PROPERTY BY OCCUPANCY.

6816. Property—How acquired.

6818. Prescription.

CHAPTER 12. ACQUISITION OF REAL PROPERTY BY ACCESSION—FIXTURES—BANKS OF STREAMS—ISLANDS.

6819. Fixtures.

6820. Alluvion.

6823. In unnavigable streams.

6825. Fixtures—Removal of by tenant.

CHAPTER 14. ACQUISITION OF PROPERTY BY TRANSFER—GRANTS AND THEIR INTERPRETATION.

6835. Transfer defined.

6837. What may be transferred.

6841. When oral.

6843. Delivery necessary.

6844. Date.

6845. Delivery to grantee is necessarily absolute.

6846. Delivery in escrow.

6848. Constructive delivery.

6849. Grants—How interpreted.

6853. Irreconcilable provisions.

6857. Incidents.

CHAPTER 15. TRANSFER OF REAL PROPERTY—METHOD AND EFFECT.

6859. Requisites for transfer of certain estates.

6867. Subsequently acquired title passes by operation of law.

6875. What the term "encumbrances" embraces.

CHAPTER 16. TRANSFER OF PERSONAL PROPERTY—MODES OF TRANSFER GIFTS.

6879. Transfer of title under sale.

CHAPTER 17. RECORDING TRANSFERS—RELEASE OF OIL, GAS AND MINERAL LEASES.

6899. Instrument—When deemed recorded.

6902. Oil, gas and mineral leases, release of record of.

6903. Action to compel release—Damages—Costs and attorney's fees.

6904. Demand for release—When and upon whom to be made.

CHAPTER 18. ACKNOWLEDGMENT AND PROOF OF INSTRUMENTS.

6905. By whom acknowledgments may be taken in this state.

6910. Officer taking acknowledgment must know person—Corporations.

6914. General form of certificate.

6915. Form of acknowledgment by corporation.

6926. Officers authorized to do certain things.

CHAPTER 19. EFFECT OF RECORDING OR FAILURE TO RECORD INSTRUMENTS.

6934. Record—To whom notice—Recording copies.

6935. Conveyances to be recorded, or are void, etc.

6938. Unrecorded instruments valid between the parties.

CHAPTER 21. HOMESTEADS.

6945. Homestead—Of what it consists.

6948. Exempt from forced sale.

6949. When subject to execution or forced sale.

- § 6953. Proceedings on execution against homestead.
- 6968. Selection of homestead—Quantity and value of land.
- *6969. "Head of a family" defined.
- 6971. Declaration of homestead—Must contain what.
- 6973. Tenure by which homestead is held.

CHAPTER 22. WILLS—EXECUTION AND REVOCATION.

- 6975. Married women, wills by.
- 7012. Lineal descendants take estate upon death of devisee before testator.
- 7013. Devises of land—How construed.
- 7015. Restriction to devise for charitable purposes.

CHAPTER 23. WILLS—INTERPRETATION.

- 7016. Testator's intention to be carried out.
- 7017. Intention to be ascertained from will.
- 7020. Harmonizing various parts.
- 7023. Words taken in ordinary sense.
- 7024. Words to receive an operative construction.
- 7025. Intestacy to be avoided.
- 7030. Devise or bequest of all real or personal property, or both.
- 7039. Mistakes and omissions.
- 7040. When devises and bequests vest.
- 7042. Death of devisee or legatee.

CHAPTER 24. WILLS—GENERAL PROVISIONS.

- 7052. Estates chargeable.
- 7057. Specific devises and legacies.
- 7069. The law of what place applies.

CHAPTER 25. SUCCESSION.

- 7071. Succession defined.
- 7072. Interstate estate—To whom passes.
- 7073. Succession to and distribution of property.
- 7079. Same—Degrees in direct line.
- 7088. Aliens may inherit, when and how.

CHAPTER 26. WATER RIGHTS—APPROPRIATIONS.

- 7093. What waters may be appropriated.
- 7094. Appropriation must be for a useful purpose.
- 7095. Point of diversion may be changed.
- 7096. Water may be turned into natural channels.
- 7097. Return of surplus water to stream.
- 7101. Diligence in appropriating.
- 7108. Miner's inch equivalent in gallons.
- 7113. Owners of water to sell surplus.
- 7117. Dam or reservoir to be securely constructed.
- 7119. Procedure for appropriation waters of adjudicated streams.
- *7122. Decree subject to prior adjudications.
- *7124A. Petition to establish rights after decree.
- 7128. Effect of decree upon subsequent appropriations.
- 7129. Appropriations of water subject to prior decrees adjudicating rights.

CHAPTER 27. WATER COMMISSIONERS—DETERMINATION OF JOINT RIGHTS.

- *7136. Appointment of water commissioners.
- *7140. Power of commissioners in admeasuring water expenses.
- *7145. Charges and expenses.
- *7147. Apportionment of fees and expenses.
- *7148. Order of court—Hearing and determination.
- *7149. Effect of order fixing fees and compensation—Lessees—Issuance of execution.
- *7150. Complaint by dissatisfied user—Procedure.
- *7151. Users must maintain headgate.
- *7159. Compensation of commissioner and apportionment thereof—Issuance of execution—Taxation of costs.

CHAPTER 29. IRRIGATION DISTRICTS—ORGANIZATION.

- § *7166. Who may organize districts.
- *7169. Hearing on petition and appointment of commissioners.
- *7171. Organization of board of commissioners—Place of meetings.
- *7173. Salary of commissioners—Penalty for interest in contracts—Bonds of commissioners.

CHAPTER 30. IRRIGATION DISTRICTS—BOARD OF COMMISSIONERS—POWERS, DUTIES AND ELECTION.

- *7174. The board of commissioners—Their status, powers and duties.
- *7177. Vacancies.
- *7184. Qualifications of electors.

CHAPTER 31. IRRIGATION DISTRICTS—EXTENSION.

- 7189. Changes in area of districts—Proceedings.
- *7189A. Proceedings to correct orders and decrees.
- *7190. Owner may have taxable acreage fixed—Exception.
- *7191. Procedure for permanent adjudication of acreage.
- *7192. Summons—Publication.

CHAPTER 34. IRRIGATION DISTRICTS—BONDS.

- 7208. Limitations on debt—Incurring power.
- 7209. Exemption of irrigation district property.
- *7210. Petition for bonds and action thereon.
- *7211. Procedure for confirmation by district court.
- *7212. Details relating to bonds.
- 7213. Liens of bonds.
- *7214. Sale of bonds, cancellation.
- *7215. Delivery of bonds, and disposition of proceeds of sale.
- *7216. Board to adopt resolution—Investigation of issue.
- *7218. Certification by secretary of state—Petitions—Interpretation of act.
- *7220. No expenditure without consent of commission.
- *7224. Expenses.
- *7226. Issuance of refunding bonds by irrigation districts.
- *7227. Refunding bonds—Form, execution and record.
- *7228. Lien of refunding bonds.
- *7229. Lien of bonds to refund warrants.
- *7230. Sale of refunding bonds—Cancellation.
- *7231A. Limitation of actions—Recognition of existing districts.

CHAPTER 35. IRRIGATION DISTRICTS—TAXES AND ASSESSMENTS.

- 7232. Tax or assessment to pay bonds and interest.
- *7234. All irrigable lands chargeable alike.
- *7235. Annual tax levy—Apportionment when tracts divided.
- *7235A. Determination of irrigable area.
- *7235B. Same.
- *7235.1. Commissioners may cancel assessments.
- *7236. Assessments on federal and other contracts.
- 7239. County treasurer as custodian of district funds.
- 7240. Collection of taxes or assessments.
- 7242. Delinquent sale.
- *7248.1. Regulation sale of irrigation district lands for taxes.
- *7248.2. District may purchase certificates of tax sale.
- *7248.3. Issuance of tax deeds.
- *7248.4. Commissioners may sell lands—Bids.
- *7248.5. Actions to quiet title.
- *7248.6. Commissioners may purchase lands at tax sales.
- *7248.7. Issuance of tax deeds.
- *7248.8. Application of act.
- 7250. Sale or transfer of lands.

CHAPTER 38. IRRIGATION DISTRICTS—APPEALS AND MISCELLANEOUS PROVISIONS.

- 7255. Unsubstantial errors to be disregarded by court—Rules of procedure—Costs.
- 7262. Interpretation of act.

CHAPTER 38A. CREATION OF DISTRICTS COVERING ESTABLISHED IRRIGATION SYSTEM FOR ADMINISTRATION WITHOUT A WATER COMMISSIONER.

- § *7264.1. Declaration of purpose of act.
- *7264.2. Act applicable to what water owners.
- *7264.3. Proposal for establishment of district.
- *7264.4. Laws not applicable.
- *7264.5. Apportionment of water.
- *7264.6. Development of water—Tax limit.
- *7264.7. Tax levy.
- *7264.8. Purpose of act.
- *7264.9. Districts declared public corporations.

CHAPTER 39. DRAINAGE DISTRICTS.

- 7265. Petition for creation of drainage district—Contents.
- *7265A. Procedure for dissolution of drainage districts.
- 7268. Hearing—Court to order notice—Publication.
- 7272. Insufficient service—Procedure.
- 7273. Service or publication of notice.
- *7280. Court to appoint commissioners—Qualifications.
- *7282. Term of commissioners.
- *7283. Election term and qualifications of commissioners.
- *7283A. Notice of election.
- *7283B. Manner of conducting election.
- *7283C. Qualifications of electors.
- *7283D. Nominations.
- *7284. Vacancies, how filled.
- 7293. Hearing of preliminary report—Publication of notice.
- 7316. Notice of hearing of report.
- 7340. Procedure to exempt land.
- 7341. Same—Owner to assert claim—Appeals.
- *7342. Illegal assessments—Cost—How defrayed.
- 7347. Payment or tender of damages—Deposit with clerk of court.
- 7354. Assessments against annexed lands.

CHAPTER 40. LOCATION AND RECORD OF MINING AND MILL SITE CLAIMS.

- 7365. Discovery—Notice—Marking boundaries—Sinking shaft.
- 7366. Record of certificate of location.
- 7373. Relocation by owner.
- 7376. Validating locations heretofore made.
- 7377. Defective locations good against person with notice.

PART V. OBLIGATIONS.

CHAPTER 2. JOINT AND SEVERAL, CONDITIONAL AND ALTERNATIVE OBLIGATIONS.

- 7399. Contribution between joint parties.
- 7402. Conditions precedent.
- 7403. Conditions concurrent.
- 7405. Performance, etc., of conditions—When essential.
- 7408. Conditions involving forfeiture—How construed.

CHAPTER 3. TRANSFER OF OBLIGATIONS.

- 7413. Burden of obligation not transferable.
- 7414. Rights arising out of obligation transferable.
- 7415. Non-negotiable instrument may be transferred.
- 7418. Same—Covenant for benefit of property.
- 7423. Apportionment of covenants.

CHAPTER 4. EXTINCTION OF OBLIGATIONS BY PERFORMANCE, OFFER OF PERFORMANCE AND PREVENTION OF PERFORMANCE.

- 7424. Obligation extinguished by performance.
- 7427. Effect of directions by creditors.
- 7429. Payment, what constitutes.
- 7430. Application of general performance.

- § 7434. To whom to be made.
- 7435. Where offer may be made.
- 7439. Offer to be made in good faith.
- 7440. Conditional offer.
- 7441. Ability and willingness essential.
- 7450. Effect of offer on accessories of obligation.

CHAPTER 5. EXTINCTION OF OBLIGATIONS BY ACCORD AND SATISFACTION, NOVATION AND RELEASE.

- 7456. Accord defined.
- 7458. Satisfaction, what constitutes.
- 7460. Novation defined.
- 7461. Modes of novation.
- 7462. Novation a contract.

CHAPTER 6. DEFINITION OF A CONTRACT.

- 7468. Essential elements of contract.

CHAPTER 7. PARTIES TO A CONTRACT.

- 7472. When contract for benefit of third person may be enforced.

CHAPTER 8. CONSENT.

- 7473. Essentials of consent.
- 7475. Apparent consent—When not free.
- 7477. Duress—In what it consists.
- 7478. Menace—In what it consists.
- 7479. Fraud, actual or constructive.
- 7480. Actual fraud, acts constituting.
- 7482. Actual fraud a question of fact.
- 7483. Undue influence—In what it consists.
- 7485. Mistake of fact.
- 7496. Ratification of contract void for want of consent.
- 7497. Assumption of obligation by acceptance of benefits.

CHAPTER 9. OBJECT.

- 7501. When contract wholly void.

CHAPTER 10. CONSIDERATION.

- 7503. Good consideration, what constitutes.
- 7505. Consideration lawful.
- 7508. Executory consideration.
- 7512. Written instrument presumptive evidence of consideration.
- 7513. Burden of proof to invalidate sufficient consideration.

CHAPTER 11. MANNER OF CREATING CONTRACTS—ORAL AND WRITTEN CONTRACTS.

- 7519. What contracts must be in writing.
- 7520. Effect of written contracts.
- 7521. Contract in writing—Takes effect when.
- 7522. Provisions of chapter on transfers of property.

CHAPTER 12. INTERPRETATION.

- 7527. Contracts—How to be interpreted.
- 7528. Intention of parties—How ascertained.
- 7529. Intention to be ascertained from language.
- 7530. Interpretation of written contracts.
- 7532. Effect to be given to every part of contract.
- 7533. Several contracts—When taken together.
- 7534. Interpretation in favor of contract.
- 7535. Words to be understood in usual sense.
- 7537. Law of place.
- 7538. Contracts explained by circumstances.
- 7539. Contract restricted to its evident object.
- 7540. Interpretation in sense in which promisor believed promisee to rely.

- § 7541. Particular clauses subordinate to general intent.
 7542. Contract—Partly written and partly printed.
 7543. Repugnancies—How reconciled.
 7544. Inconsistent words rejected.
 7545. Words to be taken most strongly against whom.
 7547. Necessary incidents implied.
 7548. Time of performance of contract.
 7549. Time—When of essence.

CHAPTER 13. UNLAWFUL CONTRACTS.

7553. What is unlawful.
 7554. Certain contracts unlawful.
 7556. Employers protected from negligence.
 7557. Exception.
 7562. Contract in restraint of marriage void.

CHAPTER 14. EXTINCTION OF CONTRACTS — RESCISSION — ALTERATION — CANCELLATION.

7563. Contracts—How extinguished.
 7564. Rescission extinguishes contracts.
 7565. When party may rescind.
 7567. Rescission—How effected.
 7569. Written contracts—How modified.

CHAPTER 15. OBLIGATIONS BY LAW.

7573. Abstinence from injury.
 7574. Fraudulent deceit.
 7575. Deceit—Acts constituting.
 7577. Restoration of thing wrongfully acquired.
 7579. Responsibility for wilful acts, negligence, etc.

CHAPTER 16. FORM OF CONTRACT—FILING OF CONDITIONAL SALES CONTRACT.

7581. Sale defined.
 7582. Subject of sale.
 7584. Agreement to sell.
 7585. Agreement to buy.
 7586. Agreement to sell and buy.
 7588. Agreement to sell real property.
 7589. Usual common-law covenants required by such contracts, when.
 7590. Form of such covenants.

CHAPTER 17. FORM OF CONTRACT—FILING OF CONDITIONAL SALES CONTRACTS.

7591. Contract for sale of personal property.
 7593. Contract for sale of real property.
 *7594. Filing contracts for sale of personal property.
 7597. Default of vendee—Seizure and sale of property—Application of proceeds.

CHAPTER 18. RIGHTS AND OBLIGATIONS OF THE SELLER—DELIVERY AND WARRANTY.

7599. When a seller may resell.
 7600. Delivery on demand.
 7606. Warranty defined.
 7608. Warranty of title to personal property.
 7610. When seller knows that buyer relies on his statements, etc.
 7612. Manufacturer's warranty against latent defects.
 7617. Warranty on sale of written instrument.

CHAPTER 19. RIGHTS AND OBLIGATIONS OF BUYER—PAYMENT AND INSPECTION.

7624. Rights in case of breach of warranty.

CHAPTER 21. EXCHANGE.

7632. Exchange defined.

CHAPTER 23. DEPOSIT FOR KEEPING—GRATUITOUS DEPOSIT.

- § 7656. Gratuitous deposit defined.

CHAPTER 24. DEPOSIT FOR KEEPING—STORAGE—STORAGE OF UNCLAIMED PROPERTY BY CARRIERS.

7660. Deposit for hire.

CHAPTER 25. DEPOSIT FOR KEEPING—INNKEEPERS.

7684. Defrauding inn and hotel keepers, etc.—Penalty.

CHAPTER 27. DEPOSIT FOR EXCHANGE.

7701. Relations of the parties.

CHAPTER 28. LOAN FOR USE—LOAN FOR EXCHANGE—LOAN OF MONEY.

7702. Loan defined.
7725. Legal interest.

CHAPTER 29. HIRING IN GENERAL.

7734. Must repair injuries, etc.
7738. When hiring terminates.

CHAPTER 30. HIRING OF REAL PROPERTY—OF PERSONAL PROPERTY.

7741. Lessor to make dwelling-house fit for its purpose.
7742. When lessee may make repairs, etc.
7745. Renewal of lease by lessee's continued possession.
7754. Return of the thing hired.

CHAPTER 31. OBLIGATIONS OF EMPLOYER.

7758. When not.

CHAPTER 32. OBLIGATIONS OF THE EMPLOYEE.

7768. Duties of gratuitous employee.

CHAPTER 33. TERMINATION OF EMPLOYMENT.

7789. Termination at will.
7791. Termination by employee for fault.

CHAPTER 34. MASTER AND SERVANT.

7795. Term of hiring.

CHAPTER 37. SERVICE WITHOUT EMPLOYMENT.

7810. Service without employment.

CHAPTER 39. CARRIAGE OF PERSONS—GRATUITOUS—FOR REWARD.

7815. General duties of carrier.

CHAPTER 40. CARRIAGE OF PROPERTY—OBLIGATIONS OF THE CARRIER.

7821. Care and diligence required of carriers.

CHAPTER 43. CARRIAGE OF MESSAGES.

7845. Degree of care and diligence required.

CHAPTER 44. COMMON CARRIERS—IN GENERAL.

7853.
7854. Effect of written contract.

CHAPTER 46. COMMON CARRIERS OF PROPERTY.

7868. When exemptions do not apply.
7869. Liability for delay.

CHAPTER 48. TRUSTS IN GENERAL—NATURE AND CREATION.

- § 7882. What constitutes one a trustee.
- 7885. How created as to trustee.
- 7886. Involuntary trustee, who is.
- 7887. Involuntary trust resulting from fraud, etc.

CHAPTER 49. TRUSTS IN GENERAL—OBLIGATIONS OF TRUSTEES AND OF THIRD PERSONS.

- 7888. Trustee's obligation to good faith.
- 7889. Trustee not to use property for his own benefit.
- 7890. Certain transactions forbidden.
- 7894. Trustee guilty of fraud, when.
- 7895. Presumption against trustee.
- 7897. Measure of liability for breach of trust.
- 7899. Cotrustees—How liable for each other.
- 7900. Third person—When involuntary trustee.

CHAPTER 50. TRUSTS FOR THE BENEFIT OF THIRD PERSONS—NATURE AND CREATION.

- 7902. Who are trustees within scope of this chapter.

CHAPTER 51. TRUSTS FOR THE BENEFIT OF THIRD PERSONS—OBLIGATIONS, POWERS AND RIGHTS OF TRUSTEES.

- 7914. Trustee's powers as agent.

CHAPTER 53. DEFINITION OF AGENCY—AUTHORITY OF AGENTS.

- 7928. Agency defined.
- 7930. Agents, general or special.
- 7933. Ostensible agency.
- 7939. Form of authority.
- 7940. Ratification of agent's act.
- 7941. Ratification of part of a transaction.
- 7942. When ratification void.
- 7943. Ratification not to work injury to third person.
- 7945. Measure of agent's authority.
- 7947. Ostensible authority defined.
- 7948. Agent's authority as to persons having notice of restrictions upon it.
- 7949. Agent's necessary authority.
- 7952. Exceptions to general authority.

CHAPTER 54. MUTUAL OBLIGATIONS BETWEEN PRINCIPALS, AGENTS AND THIRD PERSONS.

- 7957. Principal—How affected by acts of agent within the scope of his authority.
- 7959. Notice to agent—When notice to principal.
- 7961. For acts done under a mere ostensible authority.
- 7965. Principal's responsibility for agent's negligence or omission.

CHAPTER 55. DELEGATION AND TERMINATION OF AGENCY.

- 7973. Subagent, rightfully appointed, represents principal.

CHAPTER 57. PARTNERSHIP IN GENERAL—HOW CONSTITUTED.

- 7981. Partnership defined.

CHAPTER 58. PARTNERSHIP IN GENERAL—PARTNERSHIP PROPERTY AND MUTUAL OBLIGATIONS OF PARTNERS.

- 7984. Partner's interest in partnership property.
- 7989. Partners trustees for each other.
- 7990. Good faith to be observed between them.
- 7991. Mutual liability of partners to account.

CHAPTER 60. GENERAL PARTNERSHIP—POWERS, OBLIGATIONS AND LIABILITY OF PARTNERS.

- 7997. Authority of individual partner.

- § 7998. What authority partner has not.
- 7999. Partner's acts in bad faith—When ineffectual.
- 8004. Liability of partners to third person.
- 8006. Liability of one held out as partner.

CHAPTER 61. GENERAL PARTNERSHIP—DISSOLUTION AND LIQUIDATION.

- 8009. Total dissolution of partnership.
- 8010. Partial dissolution.
- 8011. Partner entitled to dissolution.
- 8012. Notice of termination.

CHAPTER 62. GENERAL PARTNERSHIP—USE OF FICTITIOUS NAMES.

- 8019. Fictitious name.
- 8024. Individual using fictitious name in business must file certificate.

CHAPTER 63. SPECIAL PARTNERSHIP—FORMATION.

- 8025. Formation of special partnership.
- 8028. Acknowledged and recorded—False statement.

CHAPTER 66. MINING PARTNERSHIPS.

- 8050. When a mining partnership exists.

CHAPTER 68. PARTIES—INSURABLE INTEREST.

- 8070. Insurable interest defined.

CHAPTER 69. CONCEALMENT AND REPRESENTATION.

- 8085. What must be disclosed.

CHAPTER 71. WARRANTIES—THE PREMIUM.

- 8132. Return of premium.
- 8134. Return for fraud.
- 8143. Preliminary proofs.

CHAPTER 72. LOSS AND NOTICE OF LOSS.

- 8144. Waiver of defects in notice, etc.
- 8145. Waiver of delay.

CHAPTER 75. FIRE INSURANCE.

- 8160. Assignee, etc., of life policy need have no interest.

CHAPTER 77. INDEMNITY.

- 8163. Indemnity defined.
- 8169. Rules for interpreting agreement of indemnity.

CHAPTER 78. GUARANTY—DEFINITION, CREATION AND INTERPRETATION.

- 8171. Guaranty defined.
- 8173. Necessity of a consideration.
- 8174. Guaranty to be in writing, etc.

CHAPTER 79. LIABILITY AND EXONERATION OF GUARANTORS—CONTINUING GUARANTY.

- 8181. Guaranty—How construed.
- 8182. Liability upon guaranty of payment or performance.
- 8191. Part performance.
- 8192. Delay of creditor does not discharge guarantor.

CHAPTER 80. SURETYSHIP—SURETIES AND THEIR LIABILITY.

- 8195. Surety defined.
- 8201. Surety discharged by certain acts of the creditor.

CHAPTER 81. RIGHTS OF SURETIES AND CREDITORS.

- § 8203. Surety has rights of guarantor.
- 8206. The surety acquires the right of the creditor.
- 8207. Surety entitled to benefit of securities held by creditor.
- 8209. Creditor entitled to benefit of securities held by surety.

CHAPTER 83. LIENS IN GENERAL—DEFINITION, CREATION AND EFFECT.

- 8224. Contracts subject to provisions of this chapter.
- 8227. Lien on future interest.
- 8229. Lien, or contract for lien, transfers no title.
- 8233. Creditor may enforce obligation.

CHAPTER 85. REDEMPTION FROM LIENS—EXTINCTION OF LIENS.

- 8241. Lien deemed accessory to the act whose performance it secures.
- 8242. Extinction by sale or conversion.
- 8243. Lien extinguished by lapse of time under statute of limitations.

CHAPTER 86. MORTGAGES IN GENERAL.

- 8246. Mortgage defined.
- 8251. Mortgage—On what a lien.
- 8252. Mortgage does not entitle mortgagee to possession.
- 8253. Mortgage not a personal obligation.
- 8255. Subsequently acquired title inures to mortgagee.
- *8259. Recording assignments of mortgages.
- 8261. Mortgage passes by assignment of debt.

CHAPTER 87. MORTGAGES OF REAL PROPERTY.

- 8262. What real property may be mortgaged.
- 8264. Mortgage renewed or extended by writing.
- 8267. Period of lien of mortgage—Extension.
- 8271. Satisfaction of mortgage.
- *8273. Certain corporate mortgages—How governed.

CHAPTER 88. MORTGAGES OF PERSONAL PROPERTY.

- *8275. What property may be mortgaged—Advances—Preferences.
- 8276. Execution—Affidavit of good faith—Copy of mortgage and receipt.
- 8278. Filing of mortgages in office of county clerk.
- 8279. Duration of liens.
- 8280. Renewal of mortgages—Affidavit.
- 8286. Foreclosure of mortgages—By action—By sale of property—Indemnity bond and notice of sale.
- 8290. Mortgage on growing crop, and the lien thereof.
- *8290.1. Chattel mortgage may include increase when.
- *8291. Penalty for removing mortgaged property or that covered by vendor's liens.

CHAPTER 89. PLEDGE

- 8292. Pledge defined.
- 8293. When contract is to be deemed a pledge.
- 8294. Delivery essential to validity of pledge.
- 8299. Pledge-holder defined.
- 8312. Pledgee's sale of securities.
- 8314. Surplus to be paid to pledgor.

CHAPTER 91. MECHANICS' LIENS.

- *8339. Who entitled to lien.
- *8340. How lien perfected.
- 8342. What property affected.
- 8343. Leasehold interest—How affected.
- 8344. Priority of lien over mortgage.

CHAPTER 92. LIENS FOR SALARIES AND WAGES.

- 8351. Preferred creditors when assignment of property is made.
- 8355. Service of notice.

CHAPTER 93. LIENS UPON CROPS FOR SEED GRAIN AND HAIL INSURANCE.

- § 8359. Lien upon crops for seed or for funds to purchase seed.
 8360. Filing statement of lien in office of county clerk and recorder.
 8361. Priority of lien.

CHAPTER 94. THRESHERMEN'S LIENS.

- *8370. Limitation of actions to foreclose threshermen's liens.

CHAPTER 95. LIENS ON OIL AND GAS WELLS AND PIPE-LINES.

- *8375. Liens for labor and material for oil and gas wells and pipe-lines.
 *8377. Enforcement and filing of liens—Limitations.

CHAPTER 96. MISCELLANEOUS LIENS

8378. Lien of seller of real property.
 8383. Agister's liens and liens of service—Priority.
 *8385. Procedure to enforce lien—Sale.

CHAPTER 98. GENERAL PROVISIONS.

8401. Short title.
 8402. Definitions and meaning of terms.
 8403. Person primarily liable on instrument.

CHAPTER 99. FORM AND INTERPRETATION.

8408. Form of negotiable instrument.
 8409. Certainty as to sum, what constitutes.
 8411. Determinable future time, what constitutes.
 *8412. Additional provisions not affecting negotiability.
 8421. Blanks—When may be filled.
 8423. Delivery—When effectual—When presumed.
 8424. Construction where instrument is ambiguous.
 8425. Liability of person signing in trade or assumed name.
 8426. Signature by agent—Authority—How shown.
 8427. Liability of person signing as agent, etc.

CHAPTER 100. CONSIDERATION.

8431. Presumption of consideration.
 8432. What constitutes value.
 8434. When lien on instrument constitutes holder for value.
 8435. Effect of want of consideration.
 8436. Liability of accommodation indorser.

CHAPTER 101. NEGOTIATION.

8437. What constitutes negotiation.
 8448. Indorser where payable to two or more persons.

CHAPTER 102. RIGHTS OF HOLDER.

8458. Right of holder to sue—Payment.
 8459. What constitutes a holder in due course.
 8464. Rights of holder in due course.
 8465. When subject to original defenses.
 8466. Who deemed holder in due course.

CHAPTER 103. LIABILITIES OF PARTIES.

8467. Liability of maker.
 8468. Liability of drawer.
 8470. When person deemed indorser.
 8471. Liability of irregular indorser.
 8472. Warranty—Where negotiation by delivery, etc.
 8473. Liability of general indorser.
 8475. Order in which indorsers are liable.

CHAPTER 104. PRESENTMENT FOR PAYMENT.

- § 8477. Effect of want of demand on principal debtor.
- 8489. What presentment may be dispensed with.

CHAPTER 105. NOTICE OF DISHONOR.

- 8496. To whom notice of dishonor must be given.
- 8516. Waiver of notice.
- 8525. When protest need not be made.

CHAPTER 106. DISCHARGE OF NEGOTIABLE INSTRUMENTS.

- 8526. Instrument—How discharged.
- 8527. When person secondarily liable on, discharged.
- 8529. Renunciation by holder.

CHAPTER 107. BILLS OF EXCHANGE—FORM AND INTERPRETATION.

- 8534. Bill not an assignment of funds in hands of drawee.

CHAPTER 114. PROMISSORY NOTES AND CHECKS.

- 8591. Promissory note defined.
- 8593. Within what time a check must be presented.
- *8593.1. Time limit for presentation of check.
- 8596. When check operates as an assignment.

PART VI. RELATIONS OF DEBTOR AND CREDITOR—NUISANCE AND RELIEF.

CHAPTER 1. DEFINITIONS AND GENERAL PRINCIPLES.

- 8598. Who is a debtor.
- 8599. Who is a creditor.
- 8600. Contracts of debtor are valid.
- 8601. Payments in preference.

CHAPTER 2. FRAUDULENT INSTRUMENTS AND TRANSFERS.

- 8603. Transfers, etc., with intent to defraud creditors.
- 8604. Certain transfers presumed fraudulent.
- 8605. Creditor's right must be judicially ascertained.
- 8606. Question of fraud—How determined.

CHAPTER 3. BULK SALES.

- 8607. Sale of merchandise in bulk—Seller to furnish list of creditors.
- 8608. Sale without statement fraudulent and void.
- 8610. What constitutes a sale and transfer within the meaning of this chapter.

CHAPTER 4. ASSIGNMENTS FOR BENEFIT OF CREDITORS.

- 8612. When debtor may execute assignment.
- 8626. Recording assignment and filing inventory.
- 8630. Bond of assignees.
- 8631. Conditions of disposal and conversion.
- 8632. Notice to creditors to present claims.
- 8634. Duties of assignee.
- 8635. Power of court.
- 8636. Further security required.
- 8637. Accounting of assignee.

CHAPTER 5. NUISANCE—REMEDIES AGAINST PUBLIC AND PRIVATE NUISANCES.

- 8642. Nuisance defined.
- 8645. What is not deemed a nuisance.
- 8653. How abated.
- 8654. Remedies for private nuisances.

CHAPTER 6. RELIEF IN GENERAL.

- 8658. Relief in case of forfeiture.

CHAPTER 7. COMPENSATORY RELIEF—DAMAGES—INTEREST OF DAMAGES
—EXEMPLARY DAMAGES.

- § 8659. Persons suffering detriment may recover damages.
 8663. In actions other than contract.
 8666. Exemplary damages—In what cases allowed.

CHAPTER 8. MEASURE OF DAMAGES.

8667. Measure of damages for breach of contract.
 8670. Detriment caused by breach of covenant of "seizin," etc., what is.
 8674. Breach of agreement to sell personal property not paid for.
 8678. Breach of warranty of title to personal property.
 8679. Breach of warranty of quality of personal property.
 8680. Breach of warranty of quality for special purposes.
 8683. Carrier's delay.
 8685. Breach of promise to marry.

CHAPTER 9. DAMAGES FOR WRONGS.

8686. Breach of obligation other than contract.
 8687. Wrongful occupation of real property.
 8689. Conversion of personal property.
 8692. Seduction.

CHAPTER 10. PENAL DAMAGES.

8696. Injuries to trees, etc.

CHAPTER 11. GENERAL PROVISIONS.

8700. Value—How estimated in favor of buyer.
 8704. Limitation of damages.

CHAPTER 12. SPECIFIC RELIEF—POSSESSION OF PROPERTY.

8710. Not to enforce penalty, etc.
 8713. When holder may be compelled to deliver.

CHAPTER 13. SPECIFIC RELIEF—PERFORMANCE OF OBLIGATIONS.

8715. Remedy mutual.
 8716. No remedy unless mutual.
 8717. Distinction between real and personal property.
 8720. What cannot be specifically enforced.
 8721. What parties cannot be compelled to perform.

CHAPTER 14. SPECIFIC RELIEF—REVISION AND RESCISSION OF CON-
TRACTS.

8726. When contract may be revised.
 8728. Principles of revision.
 8730. When rescission may be adjudged.

CHAPTER 15. SPECIFIC RELIEF—CANCELLATION OF INSTRUMENTS.

8733. When cancellation may be ordered.
 8734. Instrument obviously void.

PART VII. MAXIMS AND GENERAL PROVISIONS.

CHAPTER 1. MAXIMS.

8739.
 8743.
 8744.
 8746.
 8752.
 8753.
 8756.
 8757.
 8758.

§ 8760.
8761.
8766.
8772.

CHAPTER 2. DEFINITIONS AND GENERAL PROVISIONS.

8776. Meaning of words.
8780. Notice, actual and constructive.

CODE OF CIVIL PROCEDURE.

PART I. COURTS OF JUSTICE.

CHAPTER 3. SUPREME COURT.

8805. Power of supreme court.

CHAPTER 4. DISTRICT COURTS.

*8813.1. Residence of judge of sixteenth district.

CHAPTER 6. GENERAL PROVISIONS RESPECTING THE POWERS, PROCEEDINGS AND HOLDING OF COURTS OF JUSTICE.

8845. Courts of record may make rules.

CHAPTER 9. POWERS OF JUDGES AT CHAMBERS.

*8867.1. Jurisdiction of district judges to make certain orders.

CHAPTER 10. DISQUALIFICATION OF JUDICIAL OFFICERS.

*8868. Cases in which judge may be disqualified—Calling in another judge.

CHAPTER 12. MISCELLANEOUS PROVISIONS RESPECTING COURTS AND JUDICIAL OFFICERS.

8882. Means to carry jurisdiction into effect.

CHAPTER 14. QUALIFICATIONS AND EXEMPTIONS OF JURORS.

8890. Who competent to act as juror.

CHAPTER 15. SELECTING AND RETURNING JURORS.

8896. Jury lists, by whom and when to be made.
8899. Duty of clerk—Jury-boxes.

CHAPTER 16. DRAWING AND SUMMONING JURORS FOR COURTS OF RECORD.

8902. Summoning of trial jury.
8905. Jury-box No. 2.
8910. Sheriff to summon jurors, how.
8911. Drawing and summoning jurors to attend forthwith.

CHAPTER 20. STENOGRAPHERS.

*8933. Salary and expenses of stenographer.

CHAPTER 21. QUALIFICATIONS, ADMISSION, LICENSE AND DISBARMENT OF ATTORNEYS.

8940. Admission of attorneys from other states.
8943. Penalty for practicing without license.
8951. Complaints against attorney—How instituted and prosecuted.
8958. Allowance of attorney's fees to unlicensed persons forbidden.
8961. Disbarment of attorneys—Causes—Jurisdiction.
8963. Proceedings for removal or suspension.

CHAPTER 22. GENERAL PROVISIONS RELATING TO THE POWERS, DUTIES, LIABILITIES AND COMPENSATION OF ATTORNEYS.

- § 8974. Authority.
 8980. Certain loans prohibited.
 8993. Lien for compensation.
 8994. Attorney may be compelled to show his authority.

PART II. JUDICIAL REMEDIES.

CHAPTER 1. JUDICIAL REMEDIES—ACTIONS AND SPECIAL PROCEEDINGS.

8995. Judicial remedies defined.
 8996. Division of judicial remedies
 8997. Action defined.
 8999. Division of actions.
 9005. Civil action—By whom prosecuted.
 9007. Civil and criminal remedies not merged.

PART III. CIVIL ACTIONS.

CHAPTER 1. FORM OF CIVIL ACTION.

9008. One form of civil action only.

CHAPTER 3. LIMITATIONS OF ACTIONS FOR THE RECOVERY OF REAL PROPERTY.

9015. Seizin within ten years—When necessary in actions for real property—Action for.
 9018. Possession—When presumed—Occupation deemed under legal title, unless adverse.
 9019. Occupation under written instrument or judgment—When deemed adverse.
 9020. What constitutes adverse possession under written instrument or judgment.
 9021. Premises actually occupied under the claim of title deemed to be held adversely.
 9024. Adverse possession—How established.

CHAPTER 4. LIMITATIONS OF OTHER ACTIONS.

9027. Periods of limitation prescribed.
 9028. Within ten years.
 9029. Within eight years.
 9030. Within five years.
 9031. Within three years.
 9032. Within two years.
 9033. Two-year limitation.
 9036. Period for commencement of actions by members of police department to recover salaries.
 9037. Actions for unpaid salaries of members of police department limited to services actually performed, etc.
 9041. Actions for relief not hereinbefore provided for.

CHAPTER 5. GENERAL PROVISIONS RELATING TO THE TIME OF COMMENCEMENT OF ACTIONS.

9047. When an action is commenced.
 9048. Exception, where defendant is out of the state.
 9054. Provision where judgment has been reversed.
 9058. When demand necessary.
 9061. Limitations prescribed in action against directors, etc.

CHAPTER 6. PARTIES TO CIVIL ACTIONS.

9067. Action to be in name of party in interest.
 9068. Assignment of thing in action not to prejudice defense.
 9070. Wife may defend, when.
 9071. Infant, etc., to appear by guardian.

- § 9072. Guardian—How appointed.
 9075. Father, etc., may sue for injury or death of child.
 9076. When representative may sue for death of one caused by the wrongful act of another.
 9077. Who may be joined as plaintiffs.
 9078. Who may be joined as defendants.
 9083. Parties in interest—When to be joined—When one or more may sue or defend for the whole.
 9084. Plaintiff may sue on one action for the different parties to commercial paper.
 9076. Action—When not to abate by death, marriage or other disability—proceedings in such case.
 9087. Another person may be substituted for the defendant.
 9088. Intervention—When it takes place and how made.
 9089. Associates may be sued by name of association.
 9090. When other parties must be brought in.

CHAPTER 7. PLACE OF TRIAL OF CIVIL ACTIONS.

9094. Other actions—Where the cause or some part thereof arose.
 9096. Other actions, according to the residence of the parties.
 9097. Actions may be tried in any county, unless the defendant demands a trial in the proper county.
 9098. Place of the trial may be changed in certain cases.
 9102. Change of place of trial on agreement of parties.

CHAPTER 8. MANNER OF COMMENCING CIVIL ACTIONS—SERVICE OF SUMMONS.

9105. Actions—How commenced.
 9107. Summons—How issued, and what to contain.
 9108. Alias summons—Manner and time of issuing.
 9110. Summons—How served and returned.
 9111. Summons—How served.
 9112. Service of summons on certain corporations—Made on secretary of state.
 9114. Duty of secretary of state.
 9115. Service to be deemed personal.
 9117. Publication of summons.
 9118. Manner of publication.
 9119. What summons for publication to contain.
 9121. Proceedings when only part of the defendants are served.
 9122. Proof of service—How made.
 9124. Return of summons.

CHAPTER 9. PLEADINGS IN GENERAL.

9127. What pleadings are allowed.

CHAPTER 10. THE COMPLAINT.

9129. Complaint—What to contain.
 9130. What causes of action may be joined.

CHAPTER 11. DEMURRER TO COMPLAINT.

9131. When defendant may demur.
 9132. Demurrer must specify, etc.
 9134. Amended complaints—Answer.
 9135. Objection not appearing on complaint may be taken by answer.
 9136. Objections—When deemed waived.

CHAPTER 12. ANSWER.

9137. Answer—What to contain.
 9138. Counterclaim defined.
 9139. Counterclaim—Rules thereof.
 9146. Defendant may set forth all his defense and counterclaim.
 9151. Cross-complaint—Filing—Service.

CHAPTER 13. DEMURRER TO ANSWER.

- § 9152. When plaintiff may demur to answer.
 9157. Must specify grounds.

CHAPTER 14. REPLY.

9158. What reply to contain.
 9160. Failure to reply.

CHAPTER 15. VERIFICATION OF PLEADINGS.

9163. Verification of pleadings.

CHAPTER 16. GENERAL RULES OF PLEADING.

9164. Pleadings to be liberally construed.
 9165. Frivolous pleadings—How disposed of.
 9166. Sham or irrelevant pleadings.
 9167. Account—How pleaded.
 9169. Judgments, etc.—How pleaded.
 9170. Condition precedent.
 9175. Libel and slander—How stated in complaint.
 9178. Allegations not denied—When deemed true.
 9181. Supplemental pleading.

CHAPTER 17. VARIANCE—MISTAKES IN PLEADINGS—AMENDMENTS.

9183. Material variances—How provided for.
 9185. When not to be deemed a variance.
 9186. Amendments of course, and effect of demurrer.
 9187. Amendments by the court—Enlarging time to plead and relieving from judgment.
 9191. No error or defect to be regarded unless it affects substantial rights.
 9192. Time for answer.

CHAPTER 19. CLAIM AND DELIVERY OF PERSONAL PROPERTY.

9220. Plaintiff may claim delivery.
 9221. Affidavit and its requisites.
 9238. Title in third person.

CHAPTER 20. INJUNCTION.

9242. Injunction—When not allowed.
 9243. Injunction order—When granted.
 9244. Injunction order—At what time granted, and on what papers—Who may serve.
 9247. Order to show cause.
 9250. Application to dissolve.

CHAPTER 21. ATTACHMENT.

9256. When attachment may issue.
 9257. Affidavit—What to contain.
 9259. Undertaking.
 9260. Writ—To whom directed and what to contain.
 9261. Shares of stock and debts due defendant—How attached and disposed of.
 9262. Levy of attachment.
 9267. Garnishment—When garnishee liable to plaintiff.
 9273. Property claimed by third persons.
 9275. Alias writ of attachment—Penalty.
 9276. If plaintiff obtains judgment, how satisfied.
 9282. When a motion to discharge attachment may be made, and upon what ground.
 9283. When motion made on affidavit it may be opposed by affidavit.
 9284. When writ must be discharged.
 9285. Motion to vacate or modify writ or increase security.
 9288. Different attachments—When liens accrue.

CHAPTER 22. RECEIVERS.

- § 9301. Appointment of receiver.

CHAPTER 23. DEPOSIT IN COURT.

9309. Money paid to clerk must be deposited with county treasurer.

CHAPTER 25. JUDGMENT IN GENERAL.

9313. Judgment defined.
 9314. Judgment may be for or against one of the parties.
 9315. Judgment may be against one party and action proceed as to other.
 9316. Relief to be awarded to plaintiff.
 9317. Action may be dismissed or nonsuit entered.
 9318. All other judgments are on the merits.
 9320. Effect of judgment dismissing complaint.

CHAPTER 26. JUDGMENT BY DEFAULT.

9322. In what cases judgment by default may be entered.

CHAPTER 27. ISSUES—THE MODE OF TRIAL AND POSTPONEMENT.

9326. Issue of fact—How raised.
 9327. Issue of fact—How tried—When issues both of law and fact, the former to be first disposed of.
 9331. Parties may bring issue to trial.
 9332. Motion to postpone a trial for absence of testimony, requisites of.

CHAPTER 28. TRIAL BY JURY—FORMATION OF THE JURY.

9341. Ballots when drawn from box No. 3.

CHAPTER 29. CONDUCT OF THE TRIAL.

9349. Order of trial.

CHAPTER 30. THE VERDICT.

9360. General and special verdicts defined.
 9361. When a general or special verdict may be rendered.
 9362. Verdict in actions for recovery of money or on establishing counterclaim.
 9363. Verdict in actions for the recovery of specific personal property.
 9364. Directed verdict—When.

CHAPTER 31. TRIAL BY THE COURT.

9366. Upon trial by court, decision to be in writing and filed within twenty days.
 9369. Want of findings—Judgment not reversed.
 9370. Exception for defective findings—Particular defect to be pointed out.

CHAPTER 33. PROVISIONS RELATING TO TRIALS IN GENERAL—EXCEPTIONS.

9387. What deemed excepted to.
 9389. Exceptions signed by a judge and filed with the clerk.
 9390. Exceptions not presented at time of ruling—Notice to adverse party—How settled upon, etc.
 9393. Proceedings when judge ceases to hold office.
 9394. Bills of exception may contain all material writings.

CHAPTER 34. PROVISIONS RELATING TO TRIALS IN GENERAL—NEW TRIALS.

9395. New trial defined.
 9396. New trial in equity cases.
 9397. When a new trial may be granted.
 9398. New trials—On what papers made.
 9399. Notice of intention—Contents and service.
 9400. Hearing of motion—Continuance—Papers used.

- § 9401. Stay of proceedings, when.
9402. Contents of record on appeal.

CHAPTER 25. THE MANNER OF GIVING AND ENTERING JUDGMENT.

9406. In replevin, judgment to be in the alternative, and with damages.
*9409. Judgment-roll—Contents and filing.
9410. Judgment lien—When it begins and when it expires.
9413. Transcript to be filed in any county and judgment to become a lien there.

CHAPTER 36. THE EXECUTION—RETURN OF SALE.

9419. When made returnable.
9424. What shall be liable on execution—Not affected until levy. .
9427. Property exempt from execution.
9428. Specific exemptions.
9434. Sale—How conducted.
9440. Personal property, not capable of manual delivery—How delivered.
9441. Real property—When sale absolute, and what certificate to contain.
*9441.1. Return of sales of real estate—Recording.
*9442. Real property sold—How redeemed—Who are redemptioners.
9443. Redemption money.
*9444. When judgment debtor or redemptioner may redeem—Corporation and stockholders.
9445. To whom payment may be made.
9446. What papers necessary in redemption.
9448. Who entitled to rents and profits.
9449. Possession of lands during period of redemption.
*9453. Deeds for sales heretofore made.

CHAPTER 37. PROCEEDINGS SUPPLEMENTARY TO THE EXECUTION.

9455. Proceedings to compel debtor to appear—In what cases he may be arrested—What bail may be given.
9459. Judge may order property to be applied on execution.
9460. Proceedings upon claim of another party to property, or on denial of indebtedness to judgment debtor.

CHAPTER 38. ACTIONS FOR FORECLOSURE OF MORTGAGES.

9467. Proceedings in foreclosure suits.
9470. Power of sale.
9472. Rights of redemption applicable.

CHAPTER 39. ACTIONS FOR NUISANCE, WASTE AND WILFUL TRESPASS ON REAL PROPERTY.

9476. Trespass for cutting or carrying off trees, etc., action for.

CHAPTER 40. ACTIONS TO QUIET TITLE TO REAL PROPERTY AND OTHER PROVISIONS RELATING TO ACTIONS CONCERNING REAL ESTATE.

9479. Actions to quiet title—Parties to, and venue.
*9485. Title form of summons—Publication—When service deemed complete.
*9487. Title jurisdiction acquired by service—Effect of decree—Evidence to support—Reduction of testimony to writing.
9495. Mortgage not deemed conveyance, whatever its terms—Recovery of possession by mortgage. . . .
9500. Adverse claims under acts of congress.
9501. Action to establish title to property granted to heirs of deceased entry-man.

CHAPTER 41A. SALES AND LEASES OF TRUST PROPERTY UNDER ORDER OF COURT.

- *9575.1. Court may authorize sales or leases of trust property when.
*9575.2. Leases, when authorized.
*9575.3. Mineral lease, when authorized.
*9575.4. Procedure on petition to court for order.
*9575.5. Notice of hearing—Publication.
*9575.6. Notice to minors and persons of unsound mind.

- § *9575.7. Hearing—Order—Confirmation—Bonds.
- *9575.8. Effect of final order—Appearance of unknown persons.
- *9575.9. Effect of order.
- *9575.10. Responsibility of parties dealing with trustee.

CHAPTER 42. QUO WARRANTO.

- 9576. When proceedings may be instituted.
- 9577. When against a corporation.
- 9578. Who may commence the action.
- 9580. When private person may commence action.
- 9587. Pleadings.

CHAPTER 44. PLACE OF TRIAL OF ACTIONS IN JUSTICE COURTS.

- 9625. Transfer of cases to district court.

CHAPTER 45. MANNER OF COMMENCING ACTIONS IN JUSTICE COURTS.

- 9628. Defendants may waive summons.
- 9632. Time for appearance of defendant.

CHAPTER 46. PLEADINGS IN JUSTICE COURTS.

- 9638. Form of pleadings.
- 9641. When demurrer to complaint may be put in.
- 9642. Answer.

CHAPTER 48. JUDGMENTS BY DEFAULT.

- 9664. Judgment when defendant fails to appear.

CHAPTER 50. JUDGMENTS (OTHER THAN DEFAULT) IN JUSTICE COURTS.

- 9680. Judgment of dismissal entered in certain cases without prejudice.
- 9687. Offer to compromise before trial.

CHAPTER 53. DOCKET OF JUSTICES.

- 9703. Docket—What to contain.

CHAPTER 54. GENERAL PROVISIONS RELATING TO JUSTICE COURTS.

- 9712. Blanks must be filled in all papers issued by a justice, except subpoenas.

CHAPTER 55. PROCEEDINGS IN CIVIL ACTIONS IN POLICE COURTS.

- 9725. How commenced.

CHAPTER 56. APPEALS TO SUPREME COURT.

- 9729. How judgments and orders may be reviewed.
- 9730. Party aggrieved may appeal—Names of parties.
- 9731. From what judgment or order an appeal may be taken.
- *9732. When appeal may be taken.
- 9733. Appeal—How taken.
- 9734. Undertaking or deposit on appeal.
- 9735. Stay of proceedings—Money judgments.
- 9739. Stay of proceedings—Court may limit security.
- 9745. Record on appeal from orders other than new trial.
- *9746. Authentication of copies—Abbreviated record.
- 9747. When an appeal may be dismissed.
- 9748. Effect of dismissal.
- 9750. What the court may review on an appeal from a judgment.
- 9751. Ruling against respondent may be reviewed.
- 9753. Remittitur must be certified to the clerk.

CHAPTER 57. APPEALS TO DISTRICT COURT.

- 9754. Appeal from judgment of justice's or police court.
- 9755. Must be tried anew.
- 9757. Undertaking on appeal.

CHAPTER 59. OFFER OF DEFENDANT TO COMPROMISE.

- § 9770. Proceedings on offer of the defendant to compromise after suit brought.

CHAPTER 61. MOTIONS AND ORDERS.

9772. Order and motion defined.

CHAPTER 62. NOTICES AND FILING AND SERVICE OF PAPERS.

9778. Notice and papers—How served.
 9781. Service by mail, how.
 9782. Appearance—Notices after appearance.

CHAPTER 63. COSTS AND DISBURSEMENTS.

9786. Compensation of attorneys—Costs to parties.
 9787. When allowed, of course, to the plaintiff.
 9788. Defendant's costs must be allowed, of course, in certain cases.
 9789. Costs—When in the discretion of the court.
 9790. When the several defendants are not united in interest, costs may be severed.
 9791. Costs of appeal discretionary with the court in certain cases, and when.
 9794. Costs when a tender is made before suit brought.
 9798. Counsel fees on foreclosure of mortgage.
 *9799. What costs allowed on foreclosure of liens.
 *9799.1. Filing fees and attorney's fees on foreclosure of threshermen's liens.
 9802. What are costs and disbursements.
 9803. Bill of costs.
 9804. No cost bill in justice's court.
 9805. Costs on appeal—How claimed.
 9807. Security from nonresident plaintiff.
 9808. If security not given, action dismissed.
 9809. Poor persons may sue without costs.
 *9810. State, etc., need not pay in advance.
 9814. Costs when state a party.

CHAPTER 64. GENERAL PROVISIONS.

9820. Consolidation of several actions into one.
 9821. Actions—When deemed pending.
 9823. Extension of time.
 9829. State not required to give bonds when state is a party.
 9831. Deposit instead of undertaking.

PART IV. SPECIAL PROCEEDINGS OF A CIVIL NATURE.

CHAPTER 1. PRELIMINARY PROVISIONS.

9835. Judgment and order same meaning as in civil actions.

CHAPTER 2. WRIT OF REVIEW.

9837. When and by what courts granted.
 9839. The writ to be directed to the inferior tribunal, etc.
 9844. A defective return of the writ may be perfected—Hearing and judgment.
 9846. Judgment-roll.

CHAPTER 3. WRIT OF MANDATE.

9847. Mandate defined.
 9848. When and by what court issued.
 9849. Writ—When and upon what to issue.
 *9858. If the applicant succeed, he may have damages, costs and a peremptory mandate.

CHAPTER 4. WRIT OF PROHIBITION.

9861. Prohibition defined.
 9862. Where and when issued.

CHAPTER 5. ISSUANCE OF WRITS AND RULES OF PRACTICE AND APPEALS.

§ 9866. Certain provisions applicable.

CHAPTER 6. CONFESSION OF JUDGMENT WITHOUT ACTION.

9868. Judgment may be confessed for debt due or contingent liability.
9871. How—In justice's courts.

CHAPTER 7. SUBMISSION OF CONTROVERSIES WITHOUT ACTION.

9872. Controversies—How submitted without action.

CHAPTER 9. SUMMARY PROCEEDINGS FOR OBTAINING POSSESSION OF REAL PROPERTY—FORCIBLE ENTRY AND UNLAWFUL DETAINER.

9887. Forcible entry defined.
9888. Forcible detainer defined.
9889. Unlawful detainer defined.
9898. Trial by jury.
9901. Verdict and judgment.

CHAPTER 11. CONTENTS.

9908. What acts or omissions are contempts.
9910. A contempt committed in the presence of the court may be punished summarily—When not so committed, an affidavit or statement shall be made.
9916. Hearing.
9917. Judgment and penalty, if guilty.
9921. Judgment and orders in such cases final.

CHAPTER 12. DISSOLUTION OF CORPORATIONS BY THE DISTRICT COURT.

*9927. Hearing of applications.

CHAPTER 14. EMINENT DOMAIN.

9933. Eminent domain defined.
9934. What are public uses.
9936. Private property defined—Classes enumerated.
9937. Facts necessary to be found before condemnation.
9940. The complaint and its contents.
9943. Power of court to appoint commissioners, etc.
*9947. Appeals.
9955. Private roads.

CHAPTER 19. PUBLIC ADMINISTRATOR.

10001. Estate moneys, escheats, etc.

CHAPTER 20. GENERAL JURISDICTION OF DISTRICT COURTS.

10018. Jurisdiction of the court over the estate—When exercised.
10019. When jurisdiction decided by first application.

CHAPTER 21. PROBATE OF WILLS.

10029. Who may appear and contest the will.
*10030. Probate—When no contest.

CHAPTER 22. CONTESTING PROBATE OF WILLS.

10034. Verdict of jury—Judgment.

CHAPTER 23. PROBATE OF FOREIGN WILLS.

10039. Wills proved in other states to be recorded, when and where.
10040. Proceedings on the production of a foreign will.

CHAPTER 24. CONTESTING WILLS AFTER PROBATE.

10047. Costs and expenses—By whom paid.

CHAPTER 27. PERSONS TO WHOM AND ORDER IN WHICH LETTERS OF ADMINISTRATION ARE GRANTED.

- § 10068. Order of persons entitled to administer—Partner not to administer.
- 10072. Who are incompetent to act as administrators.

CHAPTER 28. PETITION FOR LETTERS OF ADMINISTRATION AND ACTION THEREON.

- 10077. Contesting application.
- 10078. Hearing of application.
- 10082. Letters may be granted to others than those entitled.

CHAPTER 30. OATHS AND BONDS OF EXECUTORS AND ADMINISTRATORS.

- 10088. Bond of administrators, form and requirement of.
- 10089. Additional bonds—When required.
- 10090. Condition of bonds.
- 10094. Citation and requirements of judge on deficient bond—Additional security.
- 10099. Further security may be ordered.
- 10102. Further security without application of party in interest.

CHAPTER 31. SPECIAL ADMINISTRATORS AND THEIR POWERS AND DUTIES.

- 10107. Special administrators—When appointed.
- 10108. Special letters may issue at any time.
- 10111. Duties of special administrator.

CHAPTER 34. REMOVAL AND SUSPENSION OF EXECUTORS AND ADMINISTRATORS

- 10124. Suspension of powers of executor.

CHAPTER 35. INVENTORY AND APPRAISEMENT—POSSESSION OF ESTATE.

- 10131. Oath of appraisers and inventory.
- 10133. Effect of naming a debtor executor.
- 10135. To make oath to inventory.
- 10138. Administrator and executor to possess real and personal estate.
- 10139. Executor or administrator to deliver real estate to heirs of devisees, when.

CHAPTER 36. PROCEEDINGS TO COMPEL DISCLOSURE OF PROPERTY OF AN ESTATE—LIABILITY FOR EMBEZZLEMENT.

- 10141. Citation to person suspected to have embezzled estate, etc.
- 10142. Refusal to obey citation, penalty for and for embezzlement—May be compelled to disclose by imprisonment—Liable for double damages.

CHAPTER 37. PROVISIONS FOR THE SUPPORT OF THE FAMILY.

- 10144. Widow and minor children may remain in decedent's house, etc.
- 10145. All property exempt from execution to be set apart for use of family.
- 10146. May make extra allowance.
- 10147. Payment of allowance.

CHAPTER 38. THE HOMESTEAD—PROCEDURE TO SET APART.

- 10151. Rights of survivor to homestead.

CHAPTER 40. CLAIMS AGAINST THE ESTATE.

- 10170. Notice to creditors—Additional notice.
- 10173. Time within which claims against an estate to be presented.
- 10174. Claims to be sworn to, and when allowed to bear same interest as judgment.
- *10177. Approved claims or copies to be filed—Claims secured by liens may be described—Lost claims.
- *10178. Limitation actions on rejected claims.
- 10180. Claims must be presented before suit.
- 10185. Effect of judgment against executor.
- 10191. Claims of executor, etc., against the estate.
- 10194. Executor may pay interest.

CHAPTER 41. SALES OF PROPERTY OF ESTATE IN GENERAL—BORROWING MONEY—SALES OF PERSONAL PROPERTY.

- § 10195. Estate chargeable with debts—No priority.
- 10196. Money may be borrowed.
- 10197. No sales valid except by order of district court.

CHAPTER 43. SALES OF REAL ESTATE AND REALTY CONTRACTS.

- 10210. Executor or administrator may sell property, when.
- *10212. Citation to interested persons to appear.
- *10213. Copy to be served—Assent or publication.
- 10216. To sell real estate, or any part, when.
- 10219. Interested persons may apply for order of sale—Form of petition.
- *10220. Notice of sale.
- 10225. Return of proceedings—Notice of hearing—Setting aside sale—Resale.
- 10226. May file objections, when and who.
- 10227. When order of confirmation is to be made, and when not.
- 10228. Conveyances.
- 10245. Limitation of actions for vacating sale, etc.
- 10246. To what cases preceding section not to apply.

CHAPTER 44. MORTGAGING AND LEASING REAL ESTATE.

- 10249. Judge may empower administrator to mortgage or lease real estate.
- *10251. Order to show cause.
- *10252. Service of order—Assent to petition.
- *10256. Obtaining order to lease.

CHAPTER 45. GENERAL POWERS AND DUTIES OF EXECUTORS AND ADMINISTRATORS—TO RECOVER PROPERTY—TO MAINTAIN ACTIONS—OTHER POWERS.

- 10257. Executors to take possession of the entire estate.
- 10258. Executors may sue and be sued for recovery of property.
- 10261. Surviving partner to settle business—Interest therein to be appraised—Account to be rendered.

CHAPTER 46. CONVEYANCE OF REAL ESTATE BY EXECUTORS AND ADMINISTRATORS.

- 10279. Curative deeds.

CHAPTER 47. LIABILITIES AND COMPENSATION OF EXECUTORS AND ADMINISTRATORS.

- 10282. Executor to be charged with all estate, etc.
- 10283. Not to profit or lose by estate.
- 10284. Uncollected debts without fault.
- 10285. Compensation of the executor and administrator.
- 10287. Compensation of executors and administrators.

CHAPTER 48. ACCOUNTING AND SETTLEMENT BY EXECUTORS AND ADMINISTRATORS.

- 10288. Exhibit of receipts and disbursements and claims allowed.
- 10294. To render accounts at the expiration of term.
- *10295. Citation of executors, etc., to account after discharge.
- 10302. All matters may be contested by the heirs—Hearing.
- 10303. Settlement of accounts to be conclusive, when and when not.
- 10306. Moneys invested by order of court.

CHAPTER 49. THE PAYMENT OF DEBTS OF THE ESTATE.

- 10307. Order in which debts to be paid.
- 10309. Estate insufficient, a dividend to be paid.

CHAPTER 50. PARTITION AND DISTRIBUTION PRIOR TO FINAL SETTLEMENT OF ESTATE.

- 10318. Payment of legacies upon giving bond.
- 10323. Application for distribution.

CHAPTER 51. DETERMINATION OF HEIRSHIP AND INTEREST IN THE ESTATE.

- § 10324. Proceedings to determine heirship.
- 10325. Appearance of parties.

CHAPTER 52. FINAL DISTRIBUTION OF THE ESTATE—DISCHARGE OF EXECUTOR OR ADMINISTRATOR.

- 10327. Distribution of estate—How made and to whom.
- 10328. Order of distribution, contents and finality of.
- 10330. Decree to be made only after notice.
- 10332. Final settlement, order and discharge.

CHAPTER 53. PARTITION OF UNDIVIDED ESTATE AFTER DISTRIBUTION.

- 10334. Estate in common—Commissioners.

CHAPTER 56. MISCELLANEOUS—ORDERS—PROCESS—MINUTES—RECORDS—TRIALS AND APPEALS.

- 10359. Style of citation.
- 10361. Citation—How served.
- 10365. Rules of practice generally.
- 10366. New trials and appeals.
- 10369. Court to try case when no jury demanded—How and what issues to be tried.
- 10370. Court to appoint attorney for minor or absent heirs, devisees or legatees or creditors—When and what compensation he is to receive.

CHAPTER 57. INHERITANCE TAX.

- 10377-10400. Relating to inheritance taxes.

- *10377.1. How and when imposed.
- *10377.2. Primary rates, where not in excess of \$25,000.
- *10377.3. Other rates, where in excess of \$25,000.
- *10377.4. Exemptions from first \$25,000.
- *10377.5. Tax when due—Lien—Liability.
- *10377.6. Discount—Interest.
- *10377.7. Executors—Powers—Collection and payment.
- *10377.8. Refunding tax.
- *10377.9. Bond for payment of deferred tax.
- *10377.10. Bequests to executors for services.
- *10377.11. Transfer of stock by foreign executors.
- *10377.11a. Limitation of act—Payment of tax.
- *10377.11b. Effect of partial invalidity of act.
- *10377.12. District courts—Jurisdiction.
- *10377.13. Special appraiser.
- *10377.14. Special appraiser—Duties—Powers—Compensation.
- *10377.15. Hearing by the court.
- *10377.16. Unpaid taxes—Proceedings to collect.
- *10377.17. Special administration to determine tax.
- *10377.18. State board of equalization to supervise inheritance tax.
- *10377.19. Quarterly reports of county treasurer—Tax to be paid to state.
- *10377.20. Composition and compromise.
- *10377.21. Receipts, copies, recording.
- *10377.22. Definitions.
- *10377.23. Disposition of taxes.
- *10377.24. Powers of state board to appoint and fix compensation.
- *10377.25. Hearings by state board of equalization—Witnesses—Contempt, etc.
- *10377.26. Repeal.
- 10378. Estates not exceeding twenty-five thousand dollars—Imposition of tax—Primary rates.
- 10379. Estates in excess of twenty-five thousand dollars—Imposition of tax.
- 10380. Exemptions from first twenty-five thousand.
- 10381. Taxes—When and how payable.

CHAPTER 58. GUARDIANS OF MINORS.

- 10407. Powers and duties of guardians.

CHAPTER 59. GUARDIANS OF INSANE AND INCOMPETENT PERSONS.

- § 10412. Guardians of insane and other incompetent persons.
- 10414. Powers and duties of such guardians.
- 10415. Petition for restoration to capacity.

CHAPTER 60. POWERS AND DUTIES OF GUARDIANS.

- 10422. Guardian to return inventory of estate of ward—Appraisers to be appointed—Like proceedings when other property acquired.
- 10423. Settlements of guardians.
- 10425. Expenses and compensations of guardians.

CHAPTER 61. SALES OF PROPERTY BY GUARDIAN.

- *10434. Service of order—Consent.

CHAPTER 62. NONRESIDENT GUARDIANS AND WARDS.

- 10444. Guardians of nonresident persons.

CHAPTER 65. FINANCIAL AID OF DEPENDENT CHILDREN—MOTHERS' PENSION ACT.

- 10480. Allowance for dependent children.
- *10482. Conditions of allowance—Application—Hearing—Reports—Citations.
- 10483. Order of court—Recording—Warrants, how issued.

PART V. EVIDENCE.

CHAPTER 1. DEFINITIONS, KINDS AND DEGREES OF EVIDENCE.

- 10491. The degree of certainty required to establish facts.
- 10495. Secondary evidence defined.
- 10497. Indirect evidence defined.
- 10498. Prima facie evidence defined.
- 10502. Conclusive evidence defined.
- 10503. Cumulative evidence defined.

CHAPTER 2. GENERAL PRINCIPLES OF EVIDENCE.

- 10505. One witness sufficient to prove a fact.
- 10506. Testimony confined to personal knowledge.
- 10508. Witness presumed to speak the truth.
- 10510. Declarations of predecessor in title evidence.
- 10514. Declaration of decedent evidence against his successor in interest.
- 10515. When part of the transaction proved, the whole is admissible.
- 10516. Contents of writing—How proved.
- 10517. An agreement reduced to writing deemed the whole.
- 10519. Construction of statutes and instruments—General rule.
- 10520. The intention of the legislature or parties.
- 10521. The circumstances to be considered.
- 10522. Terms to be construed in their general acceptance.
- 10529. Evidence confined to material allegations.
- 10531. Facts which may be proved on trial.

CHAPTER 3. JUDICIAL NOTICE OF FACTS.

- 10532. Certain facts of general notoriety assumed to be true—Specification of such facts.

CHAPTER 4. WITNESSES.

- 10534. All persons capable of perceptions and communication may be witnesses.
- 10535. Persons who cannot be witnesses.
- *10536. Persons in certain relations cannot be examined.

CHAPTER 5. WRITINGS—PUBLIC WRITINGS.

- 10540. Public writings defined.
- 10541. All others private.
- 10543. Public officer bound to give copies.
- 10544. Four kinds of public writings.

- § 10545. Laws, written or unwritten.
- 10549. Unwritten law defined.
- 10555. Record—How authenticated as evidence.
- 10558. Effect of a judgment or final order upon rights in various cases.
- 10561. What deemed adjudged in a judgment.
- 10563. Record of another state—Its effect.
- 10568. Manner of proving other official documents.
- 10569. Public record of private writing evidence.
- 10570. Entries in official books prima facie evidence.
- 10573. Contents of other official certificates.

CHAPTER 6. PRIVATE WRITINGS.

- 10581. Execution of an instrument defined.
- 10585. Original writing to be proved or accounted for.
- 10588. Writings—How proved.
- 10589. Relating to proving the execution of a writing by certain witnesses.
- 10591. Evidence of handwritings.
- 10592. Evidence of handwriting by comparison.
- 10596. Private writings—How proved.
- 10597. Removal of public records.
- 10598. Certified copies of records as evidence.

CHAPTER 8. INDIRECT EVIDENCE—INFERENCES AND PRESUMPTIONS.

- 10600. Indirect evidence classified.
- 10601. Inference defined.
- 10602. Presumption defined.
- 10603. When an inference arises.
- 10604. Presumptions may be controverted, when.
- 10605. Specification of conclusive presumptions.
- 10606. All other presumptions may be controverted.

CHAPTER 9. INDISPUTABLE EVIDENCE—EVIDENCE OF AGREEMENTS NOT IN WRITING—CONCLUSIVE AND UNANSWERABLE EVIDENCE.

- 10611. Transfer of real property to be in writing.
- 10613. Agreement not in writing—When invalid.

CHAPTER 10. PRODUCTION OF EVIDENCE—BY WHOM PROCURED.

- 10616. Evidence to be produced, by whom.

CHAPTER 11. PRODUCTION OF EVIDENCE—MEANS OF PRODUCTION—SUBPOENA.

- 10618. Subpoena for witness defined.
- 10622. When a witness is compelled to attend.
- 10623. Persons present compelled to testify.
- 10624. Disobedience—How punished.

CHAPTER 12. PRODUCTION OF EVIDENCE—MANNER OF PRODUCTION—BY AFFIDAVIT, DEPOSITION AND EXAMINATION.

- 10632. Affidavit defined.

CHAPTER 13. AFFIDAVITS.

- 10636. Affidavits—For what purpose may be used.

CHAPTER 14. DEPOSITIONS—HOW TAKEN WITHOUT AND WITHIN THE STATE.

- 10645. In the state—When taken.

CHAPTER 15. GENERAL RULES OF EXAMINATION.

- 10660. Witness not under examination may be excluded.
- 10661. Court may control mode of interrogation.
- 10664. When witness may refresh memory from notes.
- 10665. Cross-examination, as to what.
- 10666. Party producing witness, how far may impeach his credit.

- § 10667. Witness, how examined—When re-examined.
 10668. How impeached.
 10669. Same—By evidence of declarations.
 10670. Evidence of good character—When allowed.

CHAPTER 16. EFFECT OF EVIDENCE.

10672. Jury judges of effect of evidence, but to be instructed on certain points.

CHAPTER 17. RIGHTS AND DUTIES OF WITNESSES.

10673. Witness bound to attend when subpoenaed.
 10676. Witnesses protected from arrest when attending, or going or returning.

CHAPTER 18. EVIDENCE IN PARTICULAR CASES.

10680. An offer equivalent to payment.

CHAPTER 21. DECISION OF QUESTIONS OF FACT AND OF LAW—MONEYS PAID INTO COURT.

10698. Questions of fact to be decided by the jury, and the evidence addressed to them.
 10699. Questions of law addressed to the court.
 10701. Moneys paid into court.

PART VI. DEFINITIONS AND GENERAL PROVISIONS.

CHAPTER 1. DEFINITIONS AND GENERAL PROVISIONS.

10703. No common law in this state.
 10704. Provisions similar to existing laws—How construed.

PENAL CODE.

PART I. CRIMES AND PUNISHMENTS.

CHAPTER 1. DEFINITIONS AND PRELIMINARY PROVISIONS.

10713. Certain terms defined in the senses in which they are used in this code.
 10715. Civil remedies preserved.
 10721. Crime and public offense defined.
 10722. Crimes, how divided.
 10723. Felony and misdemeanor defined.
 10727. Intent, how manifested, and who considered of sound mind.
 *10728. Drunkenness no excuse for crime—When it may be considered—How insanity must be proven.

CHAPTER 2. PERSONS LIABLE TO PUNISHMENT—PARTIES TO CRIME.

10731. Classification of parties to crime.
 10732. Who are principals.

CHAPTER 4. SEDITION—CRIMINAL SYNDICALISM—DISPLAY OF RED FLAG.

10737. Sedition defined.

CHAPTER 6. OFFENSES BY AND AGAINST CANDIDATES FOR NOMINATION AND ELECTION—CONTESTS (CORRUPT PRACTICES ACT).

10773. Expenditure by or for candidates for office.
 10775. Definition of terms.
 10805. Time for commencing contest.
 10813. Contents of contest petition—Amendment—Bond—Costs—Citation—Precedence.

CHAPTER 7. OFFENSE BY PUBLIC OFFICERS.

10823. Giving or offering bribes to executive officers.
 10824. Asking or receiving bribes.

CHAPTER 10. RESCUES AND ESCAPES.

10865. Retaking goods from custody of officer.

CHAPTER 12. PERJURY AND SUBORNATION OF PERJURY.

§ 10878. Perjury defined.

CHAPTER 13. FALSIFYING EVIDENCE.

10894. Destroying evidence.

CHAPTER 14. CRIMINAL CONSPIRACY—UNFAIR DISCRIMINATION.

*10904. Unfair discrimination in purchase price of commodities.

CHAPTER 15. OTHER MISCELLANEOUS OFFENSES AGAINST PUBLIC JUSTICE.

10930. Refusing to aid officers in arrest, etc.

10931. Compounding crimes.

10950. Omission of duty by public officer.

CHAPTER 16. HOMICIDE.

10953. Murder defined.

10954. Malice defined—Express or implied.

10955. Degrees of murder.

10959. Manslaughter—Voluntary or involuntary.

10962. Proof of corpus delicti.

CHAPTER 19. ROBBERY.

10973. Robbery defined.

CHAPTER 20. ASSAULTS.

10976. Assault in the first degree defined—Penalty.

CHAPTER 22. LIBEL.

10989. Libel defined.

10990. Punishment of libel.

10991. Malice presumed.

10992. Truth may be given in evidence—Jury to determine law and fact.

CHAPTER 23. RAPE—ABDUCTION—CARNAL ABUSE OF CHILDREN—ADULTERY AND SEDUCTION—PROSTITUTION OF WOMEN.

11000. Rape defined.

11008. Importation and exportation of females for immoral purposes.

11015. Accepting money from earnings of prostitute a felony.

CHAPTER 28. SUNDRY OFFENSES AGAINST GOOD MORALS.

11039. Keeping open certain places on Sunday a misdemeanor.

*11039.1. Certain minors not to attend public dance-halls.

CHAPTER 29. INTOXICATING LIQUORS—SALE TO MINORS—REPEAL OF LAWS.

11048. Definition of terms.

*11048.1. Penalty for sale of liquor to minors.

*11048.2. Definition of terms.

*11048.3. Repeal of state prohibition laws.

11049. Liquor traffic prohibited—Exceptions.

11052. Sales without permit, when prohibited—Exceptions.

11060. Unlawful to accept packages with false statements.

11064. Certain solicitation forbidden.

11066. Common nuisance defined—Misdemeanor—Lien on premises.

11067. Action to enjoin nuisance—Injunction—Order of court—Bond.

11070. Unlawful possession of liquor—Property right.

11071. Complaint—Search-warrant, form and issuance.

11072. Form and execution of search-warrant.

11073. Regulation of seizure, of vehicles and destruction of liquor.

11075. Penalty for violation of act and false report.

11076. Self-incrimination no excuse—Exemption.

11078. Joinder of offenses—Rules of pleading.

- § 11079. Possession prima facie evidence—Burden of proof—Compromise of actions.
- 11085. Appointment, oath and removal of special officers.
- 11086. Scope of act.
- 11100. Act an exercise of police powers.
- 11102. Prohibition against dealing in intoxicating liquors in person or as agent.
- 11104. Issuance and execution of search-warrant—Seizure of intoxicating liquors.
- 11105. Hearing of return—Disposal of intoxicating liquor and other articles seized.
- 11106. Duty of peace officers to arrest offenders and seize liquor.
- 11107. Replevin of liquor and other property forbidden.
- 11109. Duty of attorney general, county attorneys and others to issue subpoena and investigate violations of law—Punishment for contempt.
- 11111. What shall be stated and proved in prosecutions.
- 11116. Duty of peace officers to make known evidence—Penalty.
- 11117. Procedure for removal of public officers for failure to perform duty.
- 11118. Original packages of intoxicating liquors not to be broken open—Penalty.
- 11121. Punishment for misdemeanor.
- 11122. Jurisdiction of district courts.

CHAPTER 30. MAINTENANCE OF COMMON NUISANCES IN CONNECTION WITH THE SALE OF INTOXICATING LIQUORS, OPIUM, PROSTITUTION AND GAMBLING.

- 11123. Definition of "person" and "building."
- 11124. Certain buildings declared nuisances.
- 11125. County attorney to abate nuisance—When warrant may issue.
- 11127. Precedence of actions—Dismissal—Costs.
- 11129. Order of abatement—Sale of fixtures—Closing of buildings—Fees—Service.

CHAPTER 33. GAMBLING.

- 11159. Gambling games prohibited—Penalty.
- 11160. Possession of gambling implements prohibited.
- 11173. Losses at gambling may be recovered in civil action.
- 11180. Racing bets unlawful.

CHAPTER 37. MISCELLANEOUS CRIMES AGAINST THE PUBLIC HEALTH AND SAFETY.

- 11239. Selling opium, etc.

CHAPTER 39. EMBEZZLEMENT AND OTHER OFFENSES BY PUBLIC OFFICERS.

- 11320. "Public moneys" as used in the preceding section defined.

CHAPTER 41. BURGLARY AND HOUSEBREAKING—POSSESSION OF BURGLARIOUS INSTRUMENTS AND DEADLY WEAPONS.

- 11346. Burglary defined.
- 11349. Word "enter" defined.

CHAPTER 42. FORGERY AND COUNTERFEITING.

- 11355. Forgery of wills, conveyances, etc.

CHAPTER 43. LARCENY.

- 11368. Larceny defined.
- 11369. Uttering fraudulent checks or drafts—Evidence.
- 11371. Grand larceny defined.
- 11377. Larceny of written instruments.
- 11382. Conversion by trustee, larceny.
- 11384. Claim of title, ground of defense.
- 11385. Larceny of gas or electricity.

CHAPTER 44. EXTORTION.

- 11389. Extortion defined.

CHAPTER 45. FALSE PERSONATION AND CHEATS—FALSE ADVERTISING—
FAKERS.

- § 11410. Obtaining money or property by false pretenses.
11416. Selling or removing mortgaged property to defraud mortgagee.

CHAPTER 49. FRAUDS IN THE MANAGEMENT OF CORPORATIONS.

11443. Receiving deposits in insolvent banks.

CHAPTER 51. MALICIOUS INJURY TO RAILROADS.

- *11473.1. Penalty for careless deposits near tracks.

CHAPTER 52. MALICIOUS MISCHIEF GENERALLY.

11478. Use of automobiles without consent of owners—Punishment.
11482. Injuring fences, building fires and hunting on premises of another when forbidden.

CHAPTER 53. CRUELTY TO ANIMALS.

- *11515A. What facts to be alleged and proved.

CHAPTER 54. MISCELLANEOUS OFFENSES.

- *11528. Penalty for leaving gates open.
11559. Unlawful entries in races.
11579. Defrauding inn and hotel keepers, etc.—Penalty.

CHAPTER 55. PUNISHMENTS—ATTEMPTS AND OTHER GENERAL PRO-
VISIONS.

11581. Acts made punishable by different provisions of this code.
11590. Attempts to commit crimes, when punishable.
11593. Second offense, how punished after conviction of former offense.
11596. Second term of imprisonment, when to commence.
11597. When term of imprisonment commences, etc.
11600. Civil rights of convict suspended.
11603. Convict competent witness.

PART II. CRIMINAL PROCEDURE.

CHAPTER 1. RIGHTS OF DEFENDANTS.

11607. Public offenses—How prosecuted.
11608. Criminal action defined.

CHAPTER 2. DEFINITIONS—PROSECUTION OF CRIMINAL ACTIONS—JURIS-
DICTION OF COURTS.

11617. Information.
11619. Who are magistrates.
11622. Criminal actions in district court.
11624. Leave to file information.
11625. Order of court granting.
11626. County attorney to file information.
11630. Jurisdiction of justices of the peace.

CHAPTER 4. SECURITY TO KEEP THE PEACE.

11642. Security to keep the peace, when required.
11643. Effect of giving or refusing to give security.

CHAPTER 6. SUPPRESSION OF RIOTS.

11663. Sheriff to have charge of national guard.

CHAPTER 8. REMOVAL OF OFFICERS OTHERWISE THAN BY IMPEACH-
MENT.

11687. Officers subject to removal.
11688. Accusation to be presented by the grand jury.

- § 11697. Trial by jury.
11702. Removal of public officers by summary proceedings.

CHAPTER 9. LOCAL JURISDICTION OF PUBLIC OFFENSES.

11707. Offense committed partly in one county and partly in another.

CHAPTER 10. TIME OF COMMENCING CRIMINAL ACTIONS.

11723. Limitation of five years in all other felonies.
11724. Limitation of one year in misdemeanors.
11725. Exception when defendant is out of the state.

CHAPTER 11. THE COMPLAINT.

11729. Duty to make complaint.
11731. Arrest without warrant.

CHAPTER 13. ARREST—BY WHOM AND HOW MADE—RETAKING AFTER ESCAPE.

11753. Arrests by peace officers.
11754. Arrests by private persons.
11761. Doors and windows may be broken, when.

CHAPTER 14. EXAMINATION AND COMMITMENT OR DISCHARGE OF THE DEFENDANT.

11776. On postponement, defendant to be committed or discharged on bail.
11783. Reduction to writing and authentication of testimony.
11785. Defendant, when and how discharged.
11786. When and how to be committed.

CHAPTER 15. PRELIMINARY PROVISIONS—FILING THE INFORMATION.

11798. Offenses, how prosecuted.
11801. Information to be filed.

CHAPTER 16. THE GRAND JURY—ITS FORMATION, POWERS AND DUTIES—FINDING AND PRESENTING AN INDICTMENT.

11833. Indictment must be found by five jurors, indorsed, etc.

CHAPTER 17. RULES OF PLEADING AND FORM OF THE INFORMATION AND INDICTMENT.

11841. Form of and rules of pleading.
11843. Indictment, or information, what to contain.
11844. Form of.
11845. It must be direct and certain.
11847. Must charge but one offense and in one form, except where it may be committed by different means.
11848. Statement as to time when offense was committed.
11850. Construction of words used.
11852. Indictment or information, when sufficient.
11853. Not insufficient for defect of form not tending to prejudice defendant.
11854. Presumptions of law, etc., need not be stated.
11863. Distinction between accessory before the fact and principal abrogated.
11870. Amendment followed on trial, when.
11874. When not material.

CHAPTER 18. ARRAIGNMENT OF THE DEFENDANT.

11875. Defendant must be arraigned in the court where the indictment or information is filed or transferred.
11886. Right to counsel on arraignment.
11888. Arraignment, how made.

CHAPTER 19. SETTING ASIDE THE INDICTMENT OR INFORMATION.

11891. Indictment, when set aside on motion.
11892. Defendant waives objections, unless he makes the motion.

CHAPTER 20. DEMURRER.

- § 11898. Grounds of demurrer.
11901. Judgment on demurrer.
11906. Objections, forming ground of demurrer, when taken.

CHAPTER 21. PLEAS.

11907. The different kinds of pleas.
11908. Plea, how put in and its form.

CHAPTER 22. CHANGE OF PLACE OF TRIAL.

11916. What petition to contain.

CHAPTER 23. MODE OF TRIAL—FORMATION OF JURY AND CALENDAR OR ISSUES—POSTPONEMENT OF TRIAL.

11931. When presence of defendant is necessary on the trial.
11932. Formation of trial jury.
11935. Defendant entitled to two days to prepare for trial.
11936. Notice and affidavits for postponement.
11939. Effect of failure to apply.

CHAPTER 24. CHALLENGING THE JURY.

11956. Challenges by state.
11957. Definition and kinds of challenge, for cause.
11959. Particular kinds of challenge.
11960. Ground for challenge for implied bias.
11962. Causes of challenge, how stated.

CHAPTER 25. THE TRIAL.

11969. Order of trial.
11977. Rules of evidence in civil actions applicable to criminal cases.
11980. When burden of proof shifts in trial for murder.
11987. Evidence of false pretenses.
11988. Conviction on testimony of accomplice.
11995. When evidence on either side is closed, court may advise jury to acquit.

CHAPTER 27. THE VERDICT.

12017. Return of jury.
12019. Manner of taking verdict.
12020. General verdict.
12023. Jury may find upon charge of previous conviction.
12026. To ascertain value of property.
12027. Jury may assess punishment.
12028. Court may assess punishment.
12031. Court may reduce verdict.
12032. Polling jury.

CHAPTER 28. BILLS OF EXCEPTION.

12037. In what cases.
12043. Written charges, etc., need not be excepted to.
12044. Settlement of bills of exceptions.
12045. Record on appeal in criminal cases.

CHAPTER 29. NEW TRIALS.

12048. In what cases it may be granted.
12050. Motions for new trial, how made—Hearing.

CHAPTER 30. ARREST OF JUDGMENT.

12051. Motion in arrest of judgment.

CHAPTER 31. THE JUDGMENT—INDETERMINATE SENTENCE—SUSPENSION OF SENTENCE AND PROBATION.

12055. Appointing time for judgment.
12064. Arraignment of defendant for judgment.

- § 12066. If no cause shown, judgment to be pronounced.
- 12069. Duration of imprisonment on judgment to pay a fine.
- 12074. Entry of judgment and judgment-roll.
- 12075. Indeterminate sentence.
- 12078. Court may suspend sentence, when.
- 12080. Effect of suspended sentence.
- 12082. Certificate of judgment, and order for suspension.
- 12083. Rules and regulations.
- 12084. Termination of probation—Arrest of prisoner.
- 12085. Final discharge.

CHAPTER 32. THE EXECUTION.

- 12087. Execution of a judgment other than of death.
- 12094. Judgment of death, when suspended.
- 12095. Insanity of defendant, how determined.
- 12096. Duty of county attorney upon inquisition.
- 12098. Proceedings upon finding of jury.

CHAPTER 33. APPEALS—WHEN ALLOWED—HOW TAKEN—THE EFFECT THEREOF.

- 12107. Appeal, when may be taken by the defendant.
- 12108. In what cases by the state.
- 12110. Appeal, how taken.
- 12113. Effect of appeal by the defendant.

CHAPTER 34. DISMISSING APPEALS FOR IRREGULARITY—ARGUMENT OF THE APPEAL—JUDGMENT UPON APPEAL.

- 12119. For what irregularity, and how dismissed.
- 12122. Judgment cannot be reversed without argument.
- 12125. Judgment without regard to technical errors.
- 12126. What may be reviewed on appeal by the defendants.
- 12132. Jurisdiction ceases after judgment remitted.

CHAPTER 35. IN WHAT CASES DEFENDANT MAY BE ADMITTED TO BAIL.

- 12133. Admission to bail defined.

CHAPTER 36. BAIL ON BEING HELD TO ANSWER BEFORE INFORMATION.

- 12141. Bail, how put in, and form of the undertaking.

CHAPTER 37. BAIL ON INDICTMENT OF INFORMATION BEFORE CONVICTION.

- 12149. Form of undertaking.

CHAPTER 38. BAIL ON APPEAL—DEPOSIT INSTEAD OF BAIL.

- 12154. Deposit, when and how made.
- 12156. Deposit to be applied to payment of judgment and fine.

CHAPTER 39. SURRENDER OF DEFENDANT—FORFEITURE OF BAIL—RE-COMMITMENT OF THE DEFENDANT.

- 12173. Form of the undertaking.

CHAPTER 40. WHO MAY BE WITNESS IN CRIMINAL ACTIONS.

- 12177. When the defendant is not a competent witness, and when he may testify.

CHAPTER 44. PROCEEDINGS ON INQUIRY AS TO THE SANITY OF A DEFENDANT.

- 12213. Insane person cannot be tried or punished.
- 12214. Doubts as to sanity of the defendant, how determined—Stay of proceedings on.

CHAPTER 45. COMPROMISING OFFENSES BY LEAVE OF COURT.

- 12220. Compromise of offense for which civil action may be had.

CHAPTER 46. DISMISSAL OF ACTIONS FOR WANT OF PROSECUTION OR OTHER REASONS.

- § 12223. When action may be dismissed.
- 12226. If action dismissed, defendant to be discharged, etc.
- 12229. Dismissal a bar in misdemeanor, but not in a felony.

CHAPTER 49. PARDONS—COMMUTATIONS—REMISSIONS—RESPITES—BOARD OF PARDONS.

- 12247. Power of governor to grant pardons—Board of pardons, how composed.
- 12263. May restore to citizenship.
- 12264. Parole of prisoners in state prison.

CHAPTER 50. PROCEEDINGS IN BASTARDY.

- 12267. Complaint in bastardy, what to contain, how entitled.
- 12269. Lien upon real property, how created and for what.

CHAPTER 51. PROCEEDINGS AGAINST DELINQUENT CHILDREN AND JUVENILE DELINQUENTS.

- 12275. Definition of juvenile delinquents.
- 12276. What children deemed juvenile delinquents—Evidence, when used.
- *12280. Procedure on arrest of juvenile delinquents—Detention—Jurisdiction of courts.

CHAPTER 52. JUSTICES AND POLICE COURT PROCEEDINGS—APPEALS.

- 12302. Proceedings, must be by complaint.

CHAPTER 53. THE WRIT OF HABEAS CORPUS.

- 12348. Who may prosecute writ.
- 12360. When court may discharge the party.
- 12362. Grounds of discharge in certain cases.
- 12367. Judge, when to remand.
- 12376. Party may be discharged or remanded.

CHAPTER 54. CORONER'S INQUEST.

- 12386. Testimony in writing, and where filed.

CHAPTER 55. SEARCH-WARRANTS.

- 12394. Search-warrant defined.
- 12396. It cannot be issued but upon probable cause.
- 12397. Magistrates must examine on oath, complainant, etc.
- 12398. Deposition, what to contain.
- 12399. When to issue warrant.
- 12400. Form of warrant.
- 12405. Within what time warrant must be executed.
- 12407. Property, how disposed of.
- 12413. Depositions, warrants, etc., to be returned by magistrate to district court.

CHAPTER 59. DISPOSITION OF FINES AND FORFEITURES.

- *12433. Fines, costs and forfeitures, how disposed of.

PART III. PENAL AND REFORMATORY INSTITUTIONS.

CHAPTER 1. THE STATE PRISON.

- *12447.1. Wearing apparel factory at state prison authorized.
- *12447.2. Supervision—Disposal of moneys.
- *12447.3. Skilled labor may be employed.
- *12447.4. Warden to execute contracts.
- *12447.5. Machinery for manufacture of auto number plates to be provided.
- *12447.6. Installation machinery at state penitentiary.
- *12447.7. Plates to be manufactured where.
- *12447.8. Employees, how paid.
- *12447.9. Employees, how selected.

- § *12447.10. Report of registrar.
- *12447.11. Disposal of profits.
- 12455. Commutation of sentence upon good behavior.
- 12456. Good behavior allowance for convicts in certain employment.

CHAPTER 2. COUNTY JAILS.

- 12468. County jails, by whom kept and for what used.
- 12472. Sheriff to receive prisoners committed by courts.
- *12472.1. Sheriff to receive federal prisoners when.
- *12472.2. Support of prisoners.
- 12473. Sheriffs answerable for safekeeping of such prisoners.

CHAPTER 4. STATE PAROLE COMMISSIONER.

- 12516-12518. Relating to state parole commissioner.
- 12516.1. Parole commissioner abolished.

CHAPTER 5. STATE VOCATIONAL SCHOOL FOR GIRLS.

- 12520. Purpose of school.
- 12533. Curriculum.
- 12534. Powers of executive board.
- 12535. Commitment of girls to vocational school.
- 12536. Health certificate and order of commitment.
- 12539. Term of commitment—Paroles.

CONSTITUTION OF THE STATE OF MONTANA.

ARTICLE III.

DECLARATION OF RIGHTS.

Section 1.

Cited in State ex rel. Corry v. Cooney et al., 70 Mont. 355, 360, 225 Pac. 1007; Bignell et al. v. Cummins, 69 Mont. 294, 301, 36 A. L. R. 634, 222 Pac. 797; State ex rel. Mills v. Stewart, 64 Mont. 453, 461, 210 Pac. 465.

Sec. 2.

Cited in State ex rel. Corry v. Cooney et al., 70 Mont. 355, 360, 225 Pac. 1007; Tax Commission Case, 68 Mont. 450, 473, 219 Pac. 817.

For text treatment of this subject see vol. 5 Cal. Jur. 722.

Sec. 3.

Section 4482, requiring the contract for county printing to be let to a newspaper published in the particular county continuously for a period of one year preceding its letting, is not void as in contravention of this section and section 27 of this article, as denying to the county the right to contract and depriving it of its property without due process of law. State ex rel. Woare v. Board of Commrs., 70 Mont. 252, 225 Pac. 389.

Cited in State v. Johnson, 75 Mont. 240, 252, 243 Pac. 1073; Gas Products Co. v. Rankin, 63 Mont. 372, 388, 24 A. L. R. 294, 207 Pac. 993.

For text treatment of this subject see vol. 5 Cal. Jur. 722 et seq.

Sec. 4.

This section of the state constitution, guaranteeing the free exercise and enjoyment of religious profession and worship, is not in conflict with any provision of the federal constitution, and such provision cannot be invoked as a protection against legislation enacted by chapter 22, Laws of 1923, prohibiting the unlawful possession of peyote (a narcotic), under the claim that the drug was possessed for use by members of a church to which defendant belonged, for sacra-

mental purposes. State v. Big Sheep, 75 Mont. 219, 243 Pac. 1067.

For text treatment of this subject see vol. 5 Cal. Jur. 724.

Religious belief as affecting crime of bigamy, note, 24 A. L. R. 1237.

Sectarianism in schools, note, 20 A. L. R. 1351.

Sec. 6.

The provisions of the fourteenth amendment to the constitution of the United States, and of sections 6 and 7 of this article, to the effect that no person may be deprived of his liberty without due process of law, have no application to the case of one detained in quarantine because affected with a dangerous communicable disease. In re Caselli, 62 Mont. 201, 204 Pac. 364.

Cited in Giebler v. Giebler, 69 Mont. 347, 353, 222 Pac. 436; Davenport v. Davenport, 69 Mont. 405, 411, 222 Pac. 422.

Sec. 7.

The provisions of the federal and state constitutions relative to unreasonable searches and seizures being but limitations upon the powers of the respective governments, either government is responsible only for the wrongful acts or omissions of its own officers; hence where one charged with the violation of the liquor law complains of illegal acts done by federal enforcement officers under a federal search-warrant over whom the state has no control, his rights are determinable by a reference to this section of the state constitution and not under the provisions of the fourth amendment to the United States constitution. State v. Gardner, 77 Mont. 8, 249 Pac. 574.

"Probable cause" in the sense it is employed in this section, of the state constitution and in the liquor law with relation to the issuance of search-warrants, is knowledge of facts, actual or apparent, strong enough to justify a reasonable man in the belief that he has lawful grounds for believing that the

law is being violated. *State v. Gardner*, 74 Mont. 377, 240 Pac. 984.

The constitutional guaranty against unreasonable searches and seizures extends only to one's person, papers, home and effects; hence defendant's contention that trespass by an officer upon his land so near to an outbuilding in which a still was being operated as to observe it in operation violated his constitutional right has no merit, the guaranty not covering his field (or the roadway). *State v. Ladue*, 73 Mont. 535, 237 Pac. 495.

The protection granted by this section against unreasonable searches and seizures reaches all alike, whether accused of crime or not, and the duty of enforcing it is obligatory upon all entrusted with the enforcement of the law. *State ex rel. King v. District Court*, 70 Mont. 191, 224 Pac. 862.

Since the constitutional provision against unreasonable searches and seizures was intended to take away from the legislature the power to authorize an invasion of the rights of the citizen by a search of his home or a seizure of his person or property in any other case than in which it is permitted, it must be strictly construed in his favor. *State ex rel. Samlin v. District Court*, 59 Mont. 600, 198 Pac. 362.

To meet the requirements of this section of the constitution, the affidavit or complaint upon which a search-warrant is asked for under the Prohibition Enforcement Act must be based upon something more tangible than mere hearsay or rumor. *State ex rel. Samlin v. District Court*, 59 Mont. 600, 198 Pac. 362.

The guaranty against unreasonable searches and seizures embodied in this section, of the state constitution applies to all invasions by the state government or any of its employees, of the sanctity of the home of the citizen, his personal security, personal liberty and private property where there is no probable cause to believe that his rights in this behalf have been forfeited by his own criminal conduct. *State ex rel. Samlin v. District Court*, 59 Mont. 600, 198 Pac. 362.

Cited in *State v. DeHaven*, 77 Mont. 299, 304, 250 Pac. 615; *State v. Marvin*, 76 Mont. 66, 68, 244 Pac. 882; *State ex rel. Baracker v. District Court*, 75 Mont. 476, 478, 244 Pac. 280; *State ex rel. Brown v. District Court*, 72 Mont. 213, 216, 232 Pac. 201; *State v. Gotta*, 71 Mont. 288, 229 Pac. 405; *State ex rel. Skrukud v. District Court*, 71 Mont. 570, 573, 230 Pac. 1089; *State ex rel. Sadler v. District Court*, 70 Mont. 378, 385, 225 Pac. 1000; *State ex rel. Thibodeau v. District Court*, 70 Mont. 202, 209, 224 Pac. 866; *State ex rel. Neville v. Mullen*, 63 Mont. 50, 62, 64, 66, 207 Pac. 634; *State v. Paine*, 61 Mont. 270,

272, 202 Pac. 203, holding that an information charging a public offense need not be verified by the county attorney.

For text treatment of this subject see vol. 23 Cal. Jur. 178 et seq.

Constitutional guaranties against unreasonable searches and seizures as applied to search and seizure of intoxicating liquors, notes, 13 A. L. R. 1316; 24 A. L. R. 742; 27 A. L. R. 709, 755; 39 A. L. R. 811.

Recovery of property wrongfully seized by public officials and held for use as evidence in a criminal trial, notes, 11 A. L. R. 681; 13 A. L. R. 1168.

What articles or property may be seized without a search-warrant upon making a lawful arrest, note, 32 A. L. R. 686.

Sufficiency of showing of probable cause for search for intoxicating liquors, notes, 39 A. L. R. 835; 41 A. L. R. 1539.

Manner or time of executing search-warrant for intoxicating liquors, note, 39 A. L. R. 845.

Civil liability for improper issuance of search-warrant or proceedings thereunder, note, 45 A. L. R. 605.

Sec. 8.

Cited in *State v. Johnson et al.*, 69 Mont. 38, 43, 220 Pac. 82; *State v. Vuckovich*, 61 Mont. 480, 491, 203 Pac. 491; *State ex rel. Houston v. District Court*, 61 Mont. 558, 202 Pac. 756.

For text treatment of these subjects see the article *Indictment and Information*, vol. 14 Cal. Jur. 10, and the article *Grand Jury*, vol. 13 Cal. Jur. 59.

Sec. 10.

Cited in *State v. Livermore*, 59 Mont. 362, 196 Pac. 977.

For text treatment of this subject see vol. 5 Cal. Jur. 725.

Constitutionality of statute prohibiting and penalizing blasphemy, note, 14 A. L. R. 883.

Legislation directed against social or industrial propaganda deemed to be of a dangerous tendency as invasion of freedom of speech, note, 1 A. L. R. 336.

Statute regulating newspapers or magazines as invasion of right of free speech, note, 35 A. L. R. 12.

Statute or ordinance forbidding picketing as invasion of right of free speech, note, 35 A. L. R. 1200.

Sec. 11.

Cited in *Swords v. Simineo*, 68 Mont. 164, 177, 216 Pac. 806; *City of Helena v.*

Helena Light & Ry. Co., 63 Mont. 108, 118, 207 Pac. 337.

For a text treatment of these subjects, see vol. 7 Cal. Jur. 844; vol. 6 Cal. Jur. 759 et seq.

Power to prohibit possession of more than specified amount of liquor acquired before statute went into effect, note, 2 A. L. R. 1098.

Impairment of obligation of contract by income tax on nonresident, note, 15 A. L. R. 1333.

Constitutionality, as applied to contract previously executed, of statute declaring void any contract making acceptance of benefits from relief association a bar to an action against employer, note, 12 A. L. R. 494.

Child labor laws as impairing obligation of contracts, note, 12 A. L. R. 1221.

Statute relating to amount or basis of computation upon settlement of life insurance policies, note, 17 A. L. R. 962.

Statute creating municipal liability for mobs or riots as impairment of obligation of contract, note, 13 A. L. R. 757.

Rent laws as impairment of obligation of contract, 16 A. L. R. 178.

Statute regulating time of payment of wages, as impairing obligation of contracts, notes, 12 A. L. R. 635; 26 A. L. R. 1396.

Service contract by public utility, in consideration of property, by individual or private corporation as affected by public utility acts, note, 11 A. L. R. 460.

Relieving officer or public depository or his surety from liability for loss of public funds, note, 38 A. L. R. 229.

Constitutionality of statute extending time period for redemption from tax sale, note, 38 A. L. R. 229.

Statute relating to preference in assets of insolvent bank, note, 31 A. L. R. 790.

Statute relating to disposition of unclaimed bank deposits, note, 31 A. L. R. 398.

Cemetery association's rules and regulations as impairing obligation of contracts of lot owners, notes, 32 A. L. R. 1412.

Sec. 12.

For text treatment of this subject see vol. 3 Cal. Jur. 140.

"Worthless check" acts as violating constitutional provision against imprisonment for debt, note, 23 A. L. R. 459.

Constitutional provision against imprisonment for debt as applicable to nonpayment of obligation to government, note, 40 A. L. R. 77.

Sec. 13.

Constitutionality of statutes restricting rights of aliens to bear arms, notes, 24 A. L. R. 1119; 34 A. L. R. 63.

Exception in statute forbidding carrying of weapons, as to person on his own premises, note, 31 A. L. R. 1128.

Sec. 14.

Cited in *State v. Johnson*, 75 Mont. 240, 252, 243 Pac. 1073; *Moulton et al. v. Irish et al.*, 67 Mont. 504, 510, 218 Pac. 1053; *Gas Products Co. v. Rankin*, 63 Mont. 372, 388, 24 A. L. R. 294, 207 Pac. 993; *School Dist. No. 1 v. Powers et al.*, 62 Mont. 151, 156, 204 Pac. 598.

For a text treatment of this subject see vol. 10 Cal. Jur. 326.

Compensation for confiscation or requisition of property during war, note, 25 A. L. R. 1181.

Building restriction as property right for taking of which compensation must be made, note, 17 A. L. R. 554.

Right to compensation for damages to land left outside of levee, 20 A. L. R. 302.

Right under constitutional provision against taking or damaging, to recover in other than eminent domain proceeding, for consequential damages to property no part of which is taken, 20 A. L. R. 516.

Depreciation of property by the erection of a hospital by a municipality as a "taking" or "damaging" within the constitutional provision, note, 4 A. L. R. 1012.

Statute prohibiting the manufacture of intoxicating liquor as a taking of property without compensation, note, 3 A. L. R. 286.

Statute requiring physical connection of exchanges or lines as an exercise of the power of eminent domain requiring compensation for loss suffered, note, 11 A. L. R. 1213.

Constitutionality of city planning statutes or ordinances, note, 12 A. L. R. 679.

Statute requiring railroad company to construct and maintain private crossing without compensation, note, 12 A. L. R. 227.

Statute creating liability of municipality for mob or riot as a taking of private property, note, 13 A. L. R. 758.

Statute for protection of vegetation against plant diseases as a taking of private property for public use, note, 12 A. L. R. 1136.

Constitutional limitation against taking or damaging property for public use without compensation as affecting power of legislature to relieve one authorized

to construct a dam from liability for damage to adjoining property, note, 6 A. L. R. 1326.

Exploration of land before proceedings to acquire it without making compensation, note, 29 A. L. R. 1409.

"Damage" to property from proximity of cemetery, note, 36 A. L. R. 520.

Creation of restricted residence within municipality from which business buildings or multiple residences are excluded, notes, 33 A. L. R. 287; 38 A. L. R. 1496; 43 A. L. R. 668.

Goodwill as element of damages for condemnation of property on which business is conducted, note, 41 A. L. R. 1026.

Sec. 15.

The constitutional provision declaring, among other things, that the use of sites for reservoirs necessary for collecting and storing water shall be a public one, should receive a broad construction to the end that flood waters which would otherwise go to waste may be conserved for the purpose of making the arid lands of the state productive. *Donich et al. v. Johnson et al.*, 77 Mont. 229, 250 Pac. 963.

Cited in *Komposhs v. Powers et al.*, 75 Mont. 493, 509, 244 Pac. 298; *State v. Boyle et al.*, 62 Mont. 97, 107, 204 Pac. 378; *Mettler v. Ames Realty Co.*, 61 Mont. 152, 167, 201 Pac. 702.

For text treatment of this subject see vol. 25 Cal. Jur. 1010.

Sec. 16.

The constitutional provision that one accused of crime shall have the right to trial by an impartial jury is a limitation upon the power of the legislature and it is beyond its power to curtail it; hence, where it clearly appears from the examination of a juror on his voir dire that some circumstance or connection with the case renders him unfit to serve, he should be disqualified even though the cause does not fall within any of these specified in the statute. *State v. Russell*, 73 Mont. 240, 235 Pac. 712.

The right to a speedy trial guaranteed by the constitution to one accused of crime may be waived by him. *State v. Test*, 65 Mont. 134, 211 Pac. 217.

Cited in *State ex rel. Stewart v. District Court*, 77 Mont. 361, 376, 251 Pac. 137; *State v. Arkle*, 76 Mont. 81, 86, 245 Pac. 526; *State v. Gangner*, 73 Mont. 137, 194, 235 Pac. 703; *State v. Russell*, 73 Mont. 240, 251, 235 Pac. 712; *State v. Danner*, 70 Mont. 517, 522, 226 Pac. 475; *State v. Reed*, 65 Mont. 51, 55, 210 Pac. 756; *State ex rel. Houston v. District Court*, 61 Mont. 558, 571, 202 Pac. 756.

For a text treatment of these subjects see vol. 7 Cal. Jur. 926 et seq.

Right of defendant as to conducting defense in person, note, 17 A. L. R. 266.

Effect of, and remedy for, infringement of right of accused to communicate with his attorney, note, 23 A. L. R. 1382.

Discharge of accused under a limitation statute as a bar to a subsequent prosecution for the same offense, note, 3 A. L. R. 519.

Constitutional guaranty of right to appear by counsel as applicable to a misdemeanor case, note, 42 A. L. R. 1157.

Right to cross-examine codefendant who takes the stand in his own behalf as included in defendant's right to meet witnesses, note, 33 A. L. R. 826.

Presence of accused during view by jury, note, 30 A. L. R. 1357.

Sec. 18.

Cited in *State ex rel. Thibodeau v. District Court*, 70 Mont. 202, 209, 224 Pac. 866; *State v. Lewis*, 67 Mont. 447, 452, 216 Pac. 337; *State v. Marchindo*, 65 Mont. 431, 444, 211 Pac. 1093; *State v. District Court*, 61 Mont. 558, 565, 202 Pac. 756.

For text treatment of these subjects see the article Criminal Law, vol. 7 Cal. Jur. 941 et seq., and the article. Witnesses, vol. 27 Cal. Jur. 23 et seq.

Former jeopardy of member of association, note, 1 A. L. R. 431.

Passing indictment to files, right to redock, note, 18 A. L. R. 1153.

Plea of former jeopardy or of former conviction or acquittal where jury was not sworn, note, 12 A. L. R. 1006.

Conviction or acquittal upon charge of murder or assault upon one person as bar to prosecution for like offense against another person at the same time, note, 20 A. L. R. 341.

Conviction or acquittal in one district as bar to prosecution in another based on continuous transportation of intoxicating liquor, note, 24 A. L. R. 1125.

Conviction or acquittal under federal statute as bar to prosecution under state or territorial statute, or vice versa, notes, 16 A. L. R. 1238; 22 A. L. R. 1551.

Effect of acquittal on similar charge under Harrison Narcotic Act, note, 39 A. L. R. 251.

Substitution of juror after completion of panel as sustaining plea of former jeopardy, notes, 28 A. L. R. 849; 33 A. L. R. 142.

Plea of former jeopardy where jury is discharged because of misconduct of one

or more of their number, note, 38 A. L. R. 706.

Acquittal as bar to a prosecution of accused for perjury committed at trial, note, 37 A. L. R. 1290.

Acquittal or conviction of one offense in connection with operation of an automobile as bar to prosecution for another, note, 44 A. L. R. 564.

Double jeopardy by prosecution for driving while intoxicated, note, 42 A. L. R. 1514.

Each bet or play at gaming on a single occasion as constituting a distinct offense, note, 35 A. L. R. 89.

Forgery of names of several individuals to the same instrument as more than one offense, note, 33 A. L. R. 562.

Privilege of witness against being compelled to testify as to violation of blue sky law, note, 30 A. L. R. 1344.

Evidence of refusal of accused to do an act which might aid in establishing his guilt, note, 35 A. L. R. 1236.

Applicability of constitutional provision against self-incrimination or being witness against one's self to a disbarment proceeding, note, 24 A. L. R. 863.

Privilege against self-incrimination before grand jury, note, 27 A. L. R. 139.

Contractual stipulation to submit to examination as affected by constitutional immunity against giving incriminating testimony, note, 18 A. L. R. 749.

Use of finger-prints as evidence as violation of constitutional provision against self-incrimination, note, 16 A. L. R. 371.

Sec. 19.

For text treatment of this subject see vol. 3 Cal. Jur. 1025.

Right to give bail in civil action or proceeding, note, 15 A. L. R. 1076.

Constitutional right to bail pending appeal from conviction, notes, 19 A. L. R. 807, 45 A. L. R. 458.

Recovery back of cash bail taken without authority, notes, 26 A. L. R. 211; 44 A. L. R. 1499.

Immunity from service of process of nonresident defendant in criminal case released on bail, note, 14 A. L. R. 775.

Passing an indictment to the files as discharging bail, note, 18 A. L. R. 1154.

Stage of proceeding at which sureties are discharged in criminal case, note, 20 A. L. R. 594.

Surrender of principal by sureties on bail bond, notes, 15 A. L. R. 1524.

Variance between name in bail bond and in judgment of forfeiture, note, 20 A. L. R. 411; 32 A. L. R. 259; 43 A. L. R. 140.

Imprisonment of principal in another jurisdiction as releasing sureties on bail bond, note, 26 A. L. R. 412.

Power to admit to bail in deportation case, note, 36 A. L. R. 887.

Necessity of acknowledgment of bail bond in open court, note, 38 A. L. R. 1108.

Liability on bail bond taken without authority, note, 34 A. L. R. 612.

Constitutionality of statute relieving against forfeiture of bail or recognizance, note, 43 A. L. R. 1233.

Escape of principal during his detention on separate charge as affecting liability of bail, note, 45 A. L. R. 1037.

Sec. 21.

For text treatment of this subject see vol. 13 Cal. Jur. 217.

Habeas corpus as remedy for infringement of right of accused to communicate with attorney, note, 23 A. L. R. 1385.

Right of one at large on bail to writ of habeas corpus, note, 14 A. L. R. 344.

Right of one arrested on extradition warrant to delay to enable him to present evidence that he is not subject to extradition, note, 11 A. L. R. 1410.

Right to discharge on ground that prosecution was barred by limitations where defendant had pleaded guilty after statute had run, note, 37 A. L. R. 1116.

Habeas corpus to test constitutionality of ordinance under which petitioner is held, note, 32 A. L. R. 1054.

Sec. 23.

The right of trial by jury guaranteed by this section is the right as it existed at the time the constitution was adopted. *State v. Mercier et al.*, 70 Mont. 333, 225 Pac. 802; *Bull v. Butte Electric Ry. Co.*, 69 Mont. 529, 223 Pac. 514.

Cited in *Solberg v. Sunburst Oil & Gas Co. et al.*, 70 Mont. 177, 181, 225 Pac. 612; *In re McLure's Estate*, 68 Mont. 556, 570, 220 Pac. 527; *Benson-Stabeck Co. v. Farmers E. Co. et al.*, 66 Mont. 395, 403, 214 Pac. 600; *Blessing v. Angell et al.*, 66 Mont. 482, 485, 214 Pac. 71.

For text treatment of this subject see vol. 15 Cal. Jur. 323.

State statutes permitting verdicts by less than twelve jurymen as applicable to actions under Federal Employers' Liability Act, note, 12 A. L. R. 713.

Right to jury trial in case of seizure of property alleged to be illegally used, note, 17 A. L. R. 568.

Attorney's right to jury trial where he is charged with failure to turn over money or property of client, note, 22 A. L. R. 1501.

Statute restricting remedy by injunction in industrial disputes as giving

right to jury trial in contempt proceedings for violating the injunction, note, 27 A. L. R. 423.

Statute creating municipal liability for mob or riot as violating right to trial by jury, note, 13 A. L. R. 758.

Statute requiring appellate review of evidence as infringement of right to jury trial, notes, 19 A. L. R. 746; 24 A. L. R. 1267; 33 A. L. R. 10.

Statute conferring on chancery courts power to abate public nuisance as invasion of constitutional guaranty of jury trial, note, 22 A. L. R. 544.

Conferring right to suffrage upon women as qualifying them as jurors, notes, 12 A. L. R. 525, 16 A. L. R. 1154.

Statutes giving right to jury trial in contempt proceedings for violating injunction in industrial disputes, note, 35 A. L. R. 461.

Right to jury trial in prosecution for driving automobile while intoxicated in violation of municipal ordinance, note, 42 A. L. R. 1513.

Statute requiring party demanding jury to pay fees or charges incidental to summoning or impaneling jurors as violation of right to jury trial, note, 32 A. L. R. 865.

Constitutionality of statute permitting separation of jury, note, 34 A. L. R. 1128.

Sec. 26.

For text treatment of this subject see vol. 5 Cal. Jur. 722.

Constitutionality of statute or ordinance prohibiting or regulating street meetings, note, 25 A. L. R. 114.

Validity of statute or ordinance forbidding picketing, note, 35 A. L. R. 1200.

Sec. 27.

Applied with section 3 of the same article in *State ex rel. Woare v. Board of Commrs.*, 70 Mont. 252, 225 Pac. 389.

Cited in *Chicago etc. Ry. Co. v. Board of R. R. Com.*, 76 Mont. 305, 318, 247 Pac. 162; *State ex rel. Rankin v. District Court*, 70 Mont. 322, 327, 225 Pac. 804; *State v. Mercier et al.*, 70 Mont. 333, 339, 225 Pac. 802; *State v. Lewis*, 67 Mont. 447, 452, 216 Pac. 337; *Gas Products Co. v. Rankin*, 63 Mont. 372, 388, 24 A. L. R. 294, 207 Pac. 993.

For text treatment of this subject see vol. 5 Cal. Jur. 861 et seq.

Regulations as to ingredients of non-alcoholic soft drinks, note, 41 A. L. R. 930.

Statutes as to use or teaching of foreign language in schools, note, 29 A. L. R. 1452.

Statute making physical disability ground for appointment of guardian, note, 30 A. L. R. 1381.

Constitutionality of statute regulating newspapers or magazines, note, 35 A. L. R. 8.

Statute or ordinance forbidding picketing, note, 35 A. L. R. 1200.

Constitutionality of statute in relation to secret societies, note, 43 A. L. R. 914.

Statute regulating time-measuring instruments or devices, note, 37 A. L. R. 134.

Validity of regulations as to garages, note, 40 A. L. R. 341.

Creation of restricted residence districts from which business buildings are excluded, notes, 19 A. L. R. 1395, 33 A. L. R. 287; 38 A. L. R. 1496; 43 A. L. R. 668.

Statute or ordinance prohibiting or limiting oil production, mining, or quarrying operations within municipal limits, note, 40 A. L. R. 788.

Constitutionality of statute making unlawful possession of intoxicating liquors legally obtained, or providing for its confiscation, note, 37 A. L. R. 1386.

Constitutionality of statute relating to disposition of old bank deposits, notes, 1 A. L. R. 1054; 31 A. L. R. 398.

Constitutionality of statutes for prevention of waste of food products, note, 38 A. L. R. 1196.

Validity of statute restricting the right of mining so as not to interfere with surface, note, 28 A. L. R. 1330.

Statutes relating to insurance contracts made and to be performed out of the state upon property or life within the state, notes, 1 A. L. R. 1665; 32 A. L. R. 636.

Inclusion in assessment of amount to cover delinquencies as a taking of property without due process, notes, 40 A. L. R. 1352; 42 A. L. R. 1185.

Statute or ordinance authorizing assessment of railroad right of way, note, 37 A. L. R. 230.

Statute providing for disbarment of attorney convicted of crime as violation of due process, note, 32 A. L. R. 1068.

Validity of regulations as to plumbing and plumbers, note, 36 A. L. R. 1342.

Statute as to preference in assets of insolvent bank, note, 31 A. L. R. 790.

Blue sky laws, notes, 15 A. L. R. 262; 24 A. L. R. 524; 27 A. L. R. 1169; 40 A. L. R. 1014.

Cold storage acts as denying due process of law, note, 29 A. L. R. 1442.

Power of state to regulate and control insurance agents or brokers, note, 36 A. L. R. 1512.

Statute relating to absence of employee, note, 28 A. L. R. 616.

Provision for contribution to general fund in absence of dependents of deceased workman, note, 35 A. L. R. 1061.

Extent of power of legislature to define hazardous employment, note, 28 A. L. R. 1222.

Constitutionality of statute regulating assignment of wages or salary, note, 37 A. L. R. 872.

Appropriation of excess income of carrier, note, 33 A. L. R. 488.

Sequestration of property in suit for divorce or separation, note, 38 A. L. R. 1084.

Statutes restricting remedy by injunction in case of industrial disputes, notes, 27 A. L. R. 411; 35 A. L. R. 951.

Providing for constructive service upon nonresident in action for tort, note, 35 A. L. R. 951.

Penalizing unsuccessful appeal to courts from action of administrative board, note, 39 A. L. R. 1181.

Denial of review of facts on appeal from commission in proceedings under Workmen's Compensation Act, note, 39 A. L. R. 1064.

Constitutionality of statute allowing suits to be instituted or continued against foreign executors or administrators, note, 40 A. L. R. 796.

Statute or ordinance denying remedy for personal injury resulting from simple negligence, note, 36 A. L. R. 1400.

Revival by legislature of right of action barred by limitation, note, 36 A. L. R. 1316.

Receiver's right to take property in summary manner or by summary proceedings from strangers to record, 40 A. L. R. 903.

State providing for confiscation or destruction, without notice, of liquors and vehicles or other property used in connection with same, note, 45 A. L. R. 93.

Constitutionality of statute making as evidence certificate of result of chemical analysis, note, 29 A. L. R. 289.

Validity of statute making tax deed prima facie evidence of regularity of sale, note, 30 A. L. R. 22.

Making possession of intoxicating liquors evidence of violation of law, note, 31 A. L. R. 1222.

Statute making possession of automobile from which identifying marks have been removed a crime, note, 42 A. L. R. 1149.

Statutory provision for attorneys' fees, note, 11 A. L. R. 884.

Compulsory examination for venereal disease, note, 2 A. L. R. 1332.

Constitutionality of statute creating municipal liability for mobs or riots, note, 13 A. L. R. 756.

Constitutionality of statutory regulations as to area of parcel that may be covered by building, note, 27 A. L. R. 443.

Validity of regulations as to area or open space for light and air, note, 9 A. L. R. 1040.

Validity of statute or ordinance relating to location of hospital, sanitarium or the like, note, 17 A. L. R. 523.

Constitutionality of statute providing for destruction of animals, note, 8 A. L. R. 67.

Power to impose dog license for benefit of private individual or corporation, note, 13 A. L. R. 829.

Fencing and stock laws, notes, 6 A. L. R. 212; 18 A. L. R. 67.

Constitutionality of statute for prevention of larceny of livestock, note, 3 A. L. R. 81.

Validity of statute eliminating scienter as condition of liability for injury by dog or other animal, note, 1 A. L. R. 1114.

Power to regulate or prohibit driveways across sidewalk, note, 22 A. L. R. 942.

Constitutionality of requirement as to bonds from operators of jitney busses, note, 22 A. L. R. 232.

Constitutionality of statutory or municipal regulations as to garbage, notes, 15 A. L. R. 287; 27 A. L. R. 1013.

Validity of statute requiring the tearing down or removal of buildings, notes, 3 A. L. R. 1630; 25 A. L. R. 120.

Constitutionality of statutes for protection of vegetation against diseases or infection, note, 12 A. L. R. 1136.

Constitutionality of statute limiting or controlling exploitation or waste of water, note, 24 A. L. R. 307.

Constitutionality of statute requiring railroad to construct and maintain private crossings, note, 12 A. L. R. 227.

Power to prohibit possession of liquor irrespective of any intention to traffic therein, note, 2 A. L. R. 1085.

Constitutionality of statute limiting or controlling waste of natural gas, note, 24 A. L. R. 310.

Constitutionality of statutes as to dower, note, 20 A. L. R. 1330.

Constitutionality of rent laws, note, 16 A. L. R. 178.

State income tax on nonresident, note, 15 A. L. R. 1329.

Validity of rule of assessment for drainage improvement, note, 2 A. L. R. 625.

Qualification of owner of property affected by public improvement act in making assessment, note, 2 A. L. R. 1207.

Validity of statute in relation to undertakers and embalmers, note, 23 A. L. R. 71.

Regulation of pool and billiard rooms and bowling-alleys as invasion of property rights, note, 20 A. L. R. 1483.

Validity of statute prescribing standard for purity of water furnished for

human consumption, note, 6 A. L. R. 475.

Constitutionality of statute or ordinance requiring commodities to be sold in a specified quantity or weight, note, 6 A. L. R. 436.

Validity of statutory requirements relating to the amount or basis of computation of settlement of life insurance policies, note, 17 A. L. R. 962.

Statute precluding defense of suicide in action on life or accident policy, note, 13 A. L. R. 787.

Constitutionality of child labor laws, notes, 12 A. L. R. 1216; 21 A. L. R. 1437.

Constitutionality of Workmen's Compensation Act directed against noninsuring or self-insuring employers, note, 18 A. L. R. 267.

Constitutionality of statutes regulating time of payment of wages, notes, 12 A. L. R. 626; 26 A. L. R. 1396.

Constitutionality of minimum wage statutes relating to private employment, note, 24 A. L. R. 1259.

Service letter acts as interference with freedom of contract, note, 27 A. L. R. 39.

Constitutionality of law regulating right to tips, as between master and servant, note, 3 A. L. R. 310.

Constitutionality of statute in relation to hotel rates or charges, note, 19 A. L. R. 641.

Constitutionality of regulations as to rates of moving vans, note, 12 A. L. R. 499.

Validity of statute or ordinance as to containers, note, 5 A. L. R. 1068.

Constitutionality of anti-cigarette legislation, note, 20 A. L. R. 926.

Constitutionality of trading-stamp legislation, note, 26 A. L. R. 707.

Constitutionality of statute authorizing garnishment of salary or wages of public officials or employees, note, 22 A. L. R. 760.

Constitutionality of statute conferring on chancery courts power to abate nuisances, notes, 5 A. L. R. 1483; 22 A. L. R. 545.

Constitutionality of statute providing for revocation of license of physician, surgeon or dentist, note, 5 A. L. R. 94.

Validity of statute creating lien on automobile for injury or damage inflicted by another than the owner operating, note, 4 A. L. R. 362.

Constitutionality of statute providing for cumulative penalty for delay in paying claim, note, 26 A. L. R. 1200.

Power to impose fine or penalty for

benefit of private individual or corporation, note, 13 A. L. R. 828.

Constitutionality of statute as to right to maintain action against carriers during federal control of carriers, notes, 4 A. L. R. 1680; 8 A. L. R. 969; 10 A. L. R. 956; 11 A. L. R. 1450.

Validity of statute requiring claims for refund of overcharges to be submitted to public service commission, note, 3 A. L. R. 203.

Constitutionality of statute prescribing conditions of right of defendant in foreign attachment to appear and defend, note, 17 A. L. R. 834.

Enactments suspending operation of statute of limitations, note, 16 A. L. R. 1327.

Revocation without notice or hearing of license to sell milk, note, 18 A. L. R. 255.

Constitutionality of provision as to notice of proposed sale of bankrupt's property, note, 22 A. L. R. 691.

Appointment of guardian for infant without service of process or notice to the latter, note, 1 A. L. R. 919.

Validity of statute as to concealment of or failure to produce books or papers as presumptive evidence, note, 4 A. L. R. 471.

Constitutionality of provisions of Torrens law as to prima facie effect of examiner's reports, note, 19 A. L. R. 62.

Validity of legislation directed against political, social or industrial propaganda deemed to be of a dangerous tendency, notes, 1 A. L. R. 336; 20 A. L. R. 1535.

Constitutionality of statute requiring persons, regardless of financial condition, to engage in some business, profession, occupation or employment, note, 9 A. L. R. 1366.

Sec. 29.

The rule prescribed by this section that the provisions of the constitution are mandatory and prohibitory applies to every part of the constitution. *State ex rel. Pierce v. Gowdy*, 62 Mont. 119, 203 Pac. 1115.

Cited in *State ex rel. Missoula County v. Brown et al.*, 73 Mont. 371, 375, 236 Pac. 548; *Tax Commission Case*, 68 Mont. 450, 470, 219 Pac. 817; *State ex rel. Bonner v. Dixon et al.*, 59 Mont. 58, 76, 195 Pac. 841; *State ex rel. Mills v. Dixon et al.*, 66 Mont. 76, 84, 213 Pac. 227.

For text treatment of this subject see vol. 5 Cal. Jur. 571.

ARTICLE IV.

DISTRIBUTION OF POWERS.

Section 1.

Chapter 154, L. 1923, authorizing the railroad commission to license motor vehicles used for the transportation of persons or property for hire, does not violate this section nor the fundamental principle of constitutional law which prohibits the legislature from delegating its power to any board or commission. *State v. Johnson*, 75 Mont. 240, 243 Pac. 1073.

The Drainage Act does not attempt to delegate legislative power to the judiciary, and therefore does not impinge upon the provisions of section 1, article IV, of the state constitution, prohibiting the exercise of powers of a state department properly belonging to any other. *In re Valley Center Drain District*, 64 Mont. 545, 211 Pac. 218.

Cited in *State ex rel. Bottomly v. District Court*, 73 Mont. 541, 547, 237 Pac. 525; *Veto Case*, 69 Mont. 325, 329, 35 A. L. R. 592, 222 Pac. 428; *Bignell et al. v. Cummins*, 69 Mont. 294, 301, 36 A. L. R. 634, 222 Pac. 797; *Tax Commission Case*, 68 Mont. 450, 465, 219 Pac. 817; *State ex rel. Houston v. District Court*, 61 Mont. 558, 566, 202 Pac. 756.

For text treatment of this subject see vol. 5 Cal. Jur. 656 et seq.

Validity of statute vesting discretion in public officials without prescribing a rule of action, note, 12 A. L. R. 1435.

Federal Trade Commission Act as illegal

delegation of power, note, 18 A. L. R. 549.

Illegal delegation of power to courts by statute relating to fencing districts, note, 6 A. L. R. 218.

Constitutionality of statute conferring on court power as to suspension of sentence, note, 26 A. L. R. 399.

Statute permitting declaratory judgments as attempt to impose nonjudicial functions on courts, notes, 12 A. L. R. 57; 19 A. L. R. 1124.

Validity of curative statute impairing judgment or rendering it ineffective, note, 25 A. L. R. 1136.

Limiting power of court to declare a statute unconstitutional, note, 15 A. L. R. 331.

Statute creating municipal liability for mob or riot as usurpation of judicial powers, note, 13 A. L. R. 758.

Statute providing for revocation of license of physician or surgeon or dentist as encroachment on judicial power, note, 5 A. L. R. 94.

Constitutionality of statute authorizing guardian to sell or lease land of ward, note, 4 A. L. R. 1552.

Statute restricting injunction in industrial disputes as encroachment on judicial power, notes, 27 A. L. R. 411; 35 A. L. R. 460.

Constitutionality of statute empowering court to permit separation of jury in its discretion, note, 34 A. L. R. 1128.

Constitutionality of statute forbidding direction of verdict or nonsuit, note, 29 A. L. R. 1287.

ARTICLE V.

LEGISLATIVE DEPARTMENT.

Section 1.

The word "appropriations" used in this section excluding the right to initiate (or refer) laws relating to appropriations from the power of the people in their law-making capacity, means the setting apart of a portion of the public funds for a public purpose, or a specific designated fund in esse or for which provision has been made, it not being necessary, to constitute a valid appropriation, that the fund be then in the treasury. *State ex rel. Bonner v. Dixon et al.*, 59 Mont. 58, 195 Pac. 841.

Moneys raised from the sale of state bonds for a specified purpose and placed in the treasury to the credit of a particular fund is not an "appropriation" within the meaning of this section, and therefore sections 5606-5614, providing

for the issuance and sale of bonds the proceeds of which are to be used for the construction, repair, etc., of buildings at the state educational institutions, etc., are not an appropriation act, and hence was not excluded from the legislative prerogative of the people. *State ex rel. Bonner v. Dixon et al.*, 59 Mont. 58, 195 Pac. 841.

In the exercise of their prerogative to initiate laws under this section, the people are subject to the same constitutional limitations as are applicable to the legislative assembly. *State ex rel. Bonner v. Dixon et al.*, 59 Mont. 58, 195 Pac. 841.

Cited in *State ex rel. Jones v. Erickson*, 75 Mont. 429, 436, 244 Pac. 287; *Tax Commission Case*, 68 Mont. 450, 468, 219 Pac. 817; *State ex rel. Bonner v. Dixon et al.*, 59 Mont. 58, 89, 195 Pac. 841.

For text treatment of this subject see vol. 5 Cal. Jur. 666; vol. 23 Cal. Jur. 675.

Validity of statute vesting discretion in public officials without prescribing rule of action, note, 12 A. L. R. 1435.

Federal Trade Commission Act as illegal delegation of power, note, 18 A. L. R. 549.

Delegation of power as to building restrictions to private individuals or associations, note, 2 A. L. R. 882.

Constitutionality of statute which makes the application of regulation affecting place or conditions of work dependent upon demand of employees, note, 27 A. L. R. 927.

Effect of provision for local option on constitutionality of statute relating to fencing or stock districts, note, 6 A. L. R. 218.

Delegation to fire commissioners of power to determine necessity or plan of installing, note, 6 A. L. R. 1591.

Delegation of power to regulate barbers, note, 20 A. L. R. 1112.

Delegation of power to counties, towns, etc., to provide for bounties or pensions to soldiers, note, 7 A. L. R. 1656.

Minimum wage statute as delegation of legislative power to commission, note, 24 A. L. R. 1260.

Delegation to Public Service Commission of power to regulate street railway, note, 5 A. L. R. 37.

Delegation of authority to license pool and billiard rooms and bowling-alleys, note, 20 A. L. R. 1484.

Validity of statutes imposing license tax on automobiles as affected by constitutional provisions regulating legislature's delegating power to municipality, note, 5 A. L. R. 763.

General delegation of power to guard against spread of contagious disease, note, 8 A. L. R. 836.

Delegation of legislative power to boards of health with regard to milk, notes, 18 A. L. R. 837; 42 A. L. R. 556.

Delegation of power to cemetery association to enact by-laws regulating care and management of lots, note, 32 A. L. R. 1406.

Delegation of power to regulate garages, note, 40 A. L. R. 343.

Blue sky laws as illegal delegation of power, note, 30 A. L. R. 1333.

Delegation of power to limit height of buildings, note, 34 A. L. R. 48.

Delegation to fish or game commission of power to open or close season, note, 34 A. L. R. 832.

Delegation to Public Service Commission of power to regulate issuance of securities by public utilities, note, 41 A. L. R. 891.

Libel by recall petition, note, 43 A. L. R. 186.

Ratification of amendments to federal constitution, or other acts of the state legislature under provisions of federal constitution as subject to state referendum, note, 10 A. L. R. 1510.

Recall of judicial decisions, note, 15 A. L. R. 333.

Sec. 6.

Cited in *State ex rel. Bonner v. Dixon et al.*, 59 Mont. 58, 80, 195 Pac. 841.

For text treatment of this subject see vol. 15 Cal. Jur. 972.

Sunday law as applicable to acts or proceedings of the legislature, note, 31 A. L. R. 676.

Sec. 7.

For text treatment of this subject see vol. 15 Cal. Jur. 973.

Incompatibility of officers of paymaster in army and state senator, note, 26 A. L. R. 144.

Sec. 9.

For text treatment of this subject see vol. 15 Cal. Jur. 973.

Formalities and requisites of the creation of legislative committees, note, 28 A. L. R. 1154.

Sec. 17.

Cited in *State ex rel. Bullock v. District Court*, 62 Mont. 600, 603, 205 Pac. 955; *State v. District Court*, 61 Mont. 558, 560, 202 Pac. 756.

For text treatment of this subject see vol. 21 Cal. Jur. 998.

Power of officer as affected by pendency of impeachment proceeding, note, 30 A. L. R. 1149.

Sec. 18.

Cited in *State ex rel. Hessler v. District Court*, 64 Mont. 296, 297, 209 Pac. 1052; *State ex rel. Bullock v. District Court*, 62 Mont. 600, 603, 205 Pac. 955; *State v. District Court*, 61 Mont. 558, 202 Pac. 756.

For text treatment of this subject see vol. 21 Cal. Jur. 978.

Physical or mental disability as ground for removal, note, 28 A. L. R. 777.

Removal of officers for violation of blue sky laws, notes, 24 A. L. R. 536; 27 A. L. R. 1178; 30 A. L. R. 1343; 40 A. L. R. 1019.

Resignation pending suspension or criminal prosecution, note, 19 A. L. R. 47.

What amounts to conviction within statute prescribing grounds for removal of public officers, note, 24 A. L. R. 1290.

Removal of public officer for misconduct during previous term, note, 17 A. L. R. 279.

Sec. 19.

Cited in Tax Commission Case, 68 Mont. 450, 470, 219 Pac. 817.

For text treatment of this subject see vol. 23 Cal. Jur. 665.

Sec. 21.

This section and sections 23, 33, 34, and 35 of article V were cited in State ex rel. Bonner v. Dixon et al., 59 Mont. 58, 76, 77, 195 Pac. 841.

Sec. 22.

Cited in Tax Commission Case, 68 Mont. 450, 470, 219 Pac. 817.

For text treatment of this subject see vol. 23 Cal. Jur. 669.

Sec. 23.

House Bill 398, Laws of 1925, page 416, assuming on behalf of the state, liability for injuries sustained by a student in the University of Montana through the negligence of one of the state's agents and making an appropriation to discharge that liability, is not open to the objection that it contains a plurality of subjects in violation of this section of the constitution. Mills v. Stewart, 76 Mont. 429, 247 Pac. 332.

Where two or more propositions are contained in the title of an act which may be logically viewed as parts or aspects of a single plan, the constitutional requirement of unity of subject is met. State ex rel. Jones v. Erickson, 75 Mont. 429, 244 Pac. 287.

The purpose of this section of the state constitution declaring that no bill (with certain exceptions) shall be passed containing more than one subject which shall be clearly expressed in its title, is to guard against fraud which might result from incorporating in the body of the bill provisions foreign to its general purpose concerning which no information was given to the legislature or the people. Hale et al. v. Belgrade Co. et al., 74 Mont. 308, 240 Pac. 371.

Where the title of an amendatory act refers to the number of the section of the Code to be amended and indicates its subject matter with sufficient particularity to identify it to a reasonable degree of certainty it is sufficient to

withstand constitutional attack based on this section. State v. Duncan, 74 Mont. 428, 240 Pac. 978.

The title of chapter 93, L. 1925, relating to changing the boundaries of Fergus and Judith Basin counties, the effect of which was to include within the boundaries of Fergus county the entire county of Petroleum, thus abolishing the latter county, was held insufficient to meet the requirements of this section. State ex rel. Foot v. Burr et al., 73 Mont. 586, 238 Pac. 585.

The purposes of this section of the constitution, prohibiting the passage of an act the subject of which is not clearly expressed in its title, are to restrict the legislature to the enactment of laws the subjects of which are made known to it and the public and to guard against fraud which may result from incorporating in the body of a bill provisions foreign to its general purpose and concerning which no information is given by the title. State ex rel. Foot v. Burr et al., 73 Mont. 586, 238 Pac. 585.

Where provisions in an act are germane to the general subject expressed in the title, the unity of title required by this section is observed even though such provisions are not mentioned in the title. State ex rel. Boone v. Tullock, 72 Mont. 482, 234 Pac. 277.

Section 6081 and chapter 90, L. 1923, amendatory thereof, are not open to the charge that the title of both the original and amendatory act are insufficient to meet the requirements of this section. State ex rel. Boone v. Tullock, 72 Mont. 482, 234 Pac. 277.

In passing upon the constitutionality of an act attacked on the ground of insufficiency of its title to meet the requirements of this section, courts should give that constitutional provision a liberal construction, the title being generally sufficient if it indicates the general subject embraced in the body of the act, it not being required that it should give details or a complete list of all matters covered by the act. State ex rel. Boone v. Tullock, 72 Mont. 482, 234 Pac. 277.

The title of chapter 96, L. 1923, "An act to fix the time and method of collecting taxes and interest thereon," was held to sufficiently express the subject of the act to meet the requirements of this section. Thomas v. City of Missoula et al., 70 Mont. 478, 226 Pac. 213.

The unity of title required by this section is observed if the various provisions of the act are germane to the general subjects expressed in the title. State v. Pepper, 70 Mont. 596, 226 Pac. 1108.

If the subject of an enactment is fairly expressed in its title, it is sufficient to meet the requirement of this section and a court may not hold a title

void merely because in its opinion a better one might have been used. *State v. Mark*, 69 Mont. 18, 220 Pac. 94.

Sections 5606-5614 do not contravene the constitutional provision forbidding the enactment of any law containing more than one subject which shall be clearly expressed in its title. *State ex rel. Bonner v. Dixon et al.*, 59 Mont. 58, 195 Pac. 841.

The title of chapter 1, L. 1911 (secs. 11008-11016) held not unconstitutional as violative of the above section. *State v. Pippi*, 59 Mont. 116, 195 Pac. 556.

Cited in *Veto Case*, 69 Mont. 325, 332, 35 A. L. R. 592, 222 Pac. 428.

For text treatment of this subject see vol. 23 Cal. Jur. 646.

Sufficiency of title of statute relating to fencing and stock laws, note, 18 A. L. R. 68.

Title of anti-cigarette statutes, note, 20 A. L. R. 935.

Title of mothers' pension acts, note, 3 A. L. R. 1233.

Sufficiency of title of statute regulating newspapers or magazines, note, 35 A. L. R. 10.

Sec. 24.

Cited in *Tax Commission Case*, 68 Mont. 450, 470, 219 Pac. 817.

For text treatment of this subject see vol. 23 Cal. Jur. 667.

Sec. 26.

Section 4482, providing that the board of county commissioners must let the county printing to a newspaper published in the particular county continuously for a period of one year preceding its letting is not void as in contravention of this section. *State ex rel. Woare v. Board of Comms.*, 70 Mont. 252, 225 Pac. 389.

A special statute within the meaning of this section of the constitution, forbidding such legislation, is one which relates to particular persons or things of a class, or one made for individual cases and for less than a class, or one which relates and applies to particular members of a class either particularized by the express terms of the act or separated by any method of selection from the whole class to which the law might, but for such limitation, be applicable. *State ex rel. Redman v. Meyers*, 65 Mont. 124, 210 Pac. 1064.

While courts will not generally interfere with the determination of the legislature evinced by enacting a special statute, that the general law covering the subject is inapplicable because of extrinsic facts and circumstances or that the general statute has spent its force with the passing of time and has

become inadequate, they will hold the special act invalid under this section of the constitution, where there are not and cannot be such facts or circumstances which can militate against the operation of the general law. *State ex rel. Redman v. Meyers*, 65 Mont. 124, 210 Pac. 1064.

Cited in *State ex rel. Corry v. Cooney et al.*, 70 Mont. 355, 363, 225 Pac. 1007; *State ex rel. Rankin v. District Court*, 70 Mont. 322, 327, 225 Pac. 804; *State ex rel. Bonner v. Dixon et al.*, 59 Mont. 58, 75, 195 Pac. 841.

For text treatment of this subject see vol. 5 Cal. Jur. 792 et seq.

Local or special legislation as to plumbers and plumbing, note, 36 A. L. R. 1351.

Statute authorizing reduction of capital stock as special legislation, note, 44 A. L. R. 15.

Population as basis of classification in legislation respecting water companies, note, 45 A. L. R. 1170.

Relieving officer or public depositary or his surety from liability for loss of public funds, note, 38 A. L. R. 1516.

Statutes relating to fencing or stock districts as local or special laws, note, 18 A. L. R. 68.

Constitutionality of statute regulating time of payment of wages, note, 12 A. L. R. 612.

Constitutionality of statute authorizing guardian to sell or lease land of ward, note, 4 A. L. R. 1552.

Absentee voters law as local or special legislation, note, 14 A. L. R. 1265; 19 A. L. R. 308.

Sec. 29.

This section of the constitution, prohibiting the legislature from providing for the payment of any claim made against the state without previous authority of law is intended to prevent the recognition and discharge of claims arising from ultra vires acts of officers or agents of the state and refers exclusively to claims arising out of contract, and therefore has no application to claims arising from tortious acts of the state's agents. *Mills v. Stewart*, 76 Mont. 429, 247 Pac. 332.

A "legal claim" against the state is one previously authorized by law, and under this section of the constitution, payment of a claim not so authorized is expressly prohibited. *State ex rel. Mills v. Dixon et al.*, 66 Mont. 76, 213 Pac. 227.

For text treatment of this subject see vol. 21 Cal. Jur. 950.

Power of legislature to grant extra compensation for past services of in-

dividual public officer or employee, note, 23 A. L. R. 612.

Validity of statute or ordinance providing for pensions for municipal employees, note, 37 A. L. R. 1162.

Constitutionality of retroactive statute providing for compensation to one injured in service of state, note, 22 A. L. R. 1445.

Sec. 31.

Cited in *State ex rel. Corry v. Cooney et al.*, 70 Mont. 355, 367, 225 Pac. 1007.

For text treatment of this subject see vol. 21 Cal. Jur. 954.

Constitutional provision against increasing compensation during term of office as applicable where new duties are imposed on officer after taking office, note, 21 A. L. R. 256.

Are additional deputies provided for during term of an officer whose deputies were to be paid by the public to be paid by officer or by public, note, 26 A. L. R. 1309.

Validity of statute or ordinance providing for pensions for municipal officers, note, 37 A. L. R. 1162.

Constitutional inhibition of increase or decrease in compensation during term as applicable to nonconstitutional officer, note, 31 A. L. R. 1316.

Sec. 33.

Cited in *State ex rel. Bonner v. Dixon et al.*, 59 Mont. 58, 77, 195 Pac. 841.

For text treatment of this subject see vol. 23 Cal. Jur. 549.

Budget provisions of constitution or statute in relation to appropriation of state funds, note, 40 A. L. R. 1067.

Particularity of specification of purpose required in appropriation bill, note, 20 A. L. R. 981.

Sec. 34.

There being no constitutional or statutory provision that all state warrants shall be drawn by the state auditor, and a warrant being merely an order by which one of competent authority empowers another to pay a particular sum of money, and in view of the provision of this section, authorizing payment of state funds on warrant drawn by the "proper officer," held, that chapter 176, L. 1925, is not rendered invalid for failing to provide payment of principal and interest of state treasury notes on warrant drawn by the auditor and in providing for payment directly by the treasurer. *State ex rel. Toomey v. Board of Examiners*, 74 Mont. 1, 238 Pac. 316.

This section, providing that no money shall be paid out of the state treasury except upon appropriation "made by law," does not require the introduction

of an appropriation bill, the requirement being met by an appropriation sanctioned by law. *State ex rel. Toomey v. Board of Examiners*, 74 Mont. 1, 238 Pac. 316.

Cited in *Porter v. Hartley et al.*, 67 Mont. 244, 251, 216 Pac. 344; *State ex rel. Bonner v. Dixon et al.*, 59 Mont. 58, 77, 195 Pac. 841.

For text treatment of this subject see vol. 23 Cal. Jur. 546.

Sec. 35.

For text treatment of this subject see vol. 23 Cal. Jur. 556.

Power to impose license fee or penalty for benefit of private individual or corporation, note, 13 A. L. R. 838.

Constitutionality of statute or ordinance authorizing use of public funds for restoration or repair of privately owned public utility, note, 13 A. L. R. 313.

Contract to pay for services or reimburse expenditures as within constitutional inhibition of aid to sectarian institutions, note, 22 A. L. R. 1319.

Constitutionality of retroactive statute providing for compensation to one injured in service of state, note, 22 A. L. R. 1445.

Constitutionality of statutes providing for free text-books and other school supplies for individual use of pupils, note, 17 A. L. R. 299.

Constitutionality of statutes providing for bounty or pension for soldiers, notes, 7 A. L. R. 1636; 13 A. L. R. 587; 15 A. L. R. 1359.

Constitutionality of welfare acts for veterans of World War, note, 22 A. L. R. 1542.

Public aid to sectarian school, note, 5 A. L. R. 879.

Appropriation of public money for patriotic celebrations, note, 30 A. L. R. 1039.

Sec. 36.

For text treatment of this subject see vol. 18 Cal. Jur. 791.

Delegation to fire commissioners of power to determine necessity or plan of installing automatic sprinklers, note, 6 A. L. R. 1591.

Validity of statute or ordinance vesting discretion in public officials without prescribing a rule of action, note, 12 A. L. R. 1435.

Delegation of legislative power to boards of health with regard to milk, note, 18 A. L. R. 237.

Delegation to boards or officers of power to regulate garages, note, 40 A. L. R. 343.

Sec. 38.

If a legislative appropriation is for a "public purpose," within the meaning

of section 1, article XIII, and as limited in this section, it is not a donation; the term "donation" being synonymous with "gift," and the word "gift" comprehending an appropriation for the relief of one who has no legal claim upon which to base it. *Mills v. Stewart*, 76 Mont. 429, 247 Pac. 332.

Cited in *State ex rel. Mills v. Dixon*, 66 Mont. 76, 95, 213 Pac. 227.

Sec. 40.

For text treatment of this subject see vol. 23 Cal. Jur. 671.

Disapproval by governor of a bill in part or with modifications, note, 35 A. L. R. 600.

Vote necessary to pass bill over veto, note, 2 A. L. R. 1593.

ARTICLE VI.

APPORTIONMENT AND REPRESENTATION.

Section 5.

Cited with section 6 of the same article in *State ex rel. Corry v. Cooney et al.*, 70 Mont. 355, 368, 225 Pac. 1007.

ARTICLE VII.

EXECUTIVE DEPARTMENT.

Section 1.

Cited in *State ex rel. Toomey v. Board of Examiners*, 74 Mont. 1, 8, 238 Pac. 316.

For text treatment of this subject see vol. 5 Cal. Jur. 664.

Sec. 5.

Cited in *State ex rel. Butte Fruit & Produce Co. v. District Court*, 75 Mont. 567, 572, 244 Pac. 489; *Veto Case*, 69 Mont. 325, 330, 35 A. L. R. 592, 222 Pac. 428.

For text treatment of this subject see vol. 13 Cal. Jur. 57.

Power of governor to disapprove bill in part or with modifications, note, 35 A. L. R. 600.

Power to declare martial law, note, 24 A. L. R. 1183.

Vote necessary to pass bill over veto, note, 2 A. L. R. 1593.

Sec. 9.

The suspended sentence law as construed to the effect that the district court may order a sentence suspended after entry of judgment does not infringe the pardoning power confided by this section of the constitution to the governor with the approval of the board of pardons. *State ex rel. Bottomly v. District Court*, 73 Mont. 541, 237 Pac. 525.

Cited in *State ex rel. Reid v. District Court*, 68 Mont. 309, 312, 218 Pac. 558.

For text treatment of this subject see vol. 20 Cal. Jur. 395.

Statute conferring on court power as to suspension of sentence as infringement of power of executives to grant reprieves and pardons, note, 26 A. L. R. 400.

Power of executive to pardon one committed for contempt, notes, 23 A. L. R. 524; 26 A. L. R. 21; 38 A. L. R. 171.

Recovery of fine or penalty after pardon, note, 26 A. L. R. 1536.

Parole as suspending running of sentence, note, 28 A. L. R. 947.

Formal requisites of pardon, note, 34 A. L. R. 212.

Power to pardon or commute sentence as one which devolves upon the lieutenant-governor during the absence or disability of the governor, note, 32 A. L. R. 1151.

Judicial investigation of pardon by governor, notes, 30 A. L. R. 238; 35 A. L. R. 998.

Sec. 11.

Under the rule that a subject submitted to the legislative assembly by special message while in extraordinary session is before it for consideration to the same extent as if specifically mentioned in the governor's proclamation calling it, chapter 9, Laws of Extraordinary Session of 1921, relating to the suppression of illegal traffic in intoxicating liquor, is not invalid as in contravention of this section of the state constitution. *State v. Dishman*, 64 Mont. 530, 210 Pac. 604.

If legislation passed at a special session of the legislature is upon a subject embodied in the governor's proclamation, it does not come within the inhibition of this section of the constitution.

Sweeney v. City of Butte, 64 Mont. 230, 208 Pac. 943.

Cited in State ex rel. Bonner v. Dixon et al., 59 Mont. 58, 80, 195 Pac. 841.

Sec. 12.

Since under this section no bill shall become a law after adjournment of the legislative assembly unless approved by the governor, where, instead of approving or disapproving a general appropriation bill as a whole, or approving some of the items therein and disapproving others, he scaled certain items and approved them as scaled, which he was without power to do, his action was neither an approval nor a disapproval, resulting in no appropriations as to such items. Veto Case, 69 Mont. 325, 35 A. L. R. 592, 222 Pac. 428.

Cited in State ex rel. Toomey v. State Board of Examiners, 74 Mont. 1, 14, 238 Pac. 316.

For text treatment of this subject see vol. 23 Cal. Jur. 671.

Vote necessary to pass bill over veto, note, 2 A. L. R. 1593.

Disapproval by governor of a bill in part or with modifications, note, 35 A. L. R. 600.

Sec. 13.

Under section 13 of this article, empowering the governor "to disapprove of any item or items of any bill making appropriations of money, embracing distinct items," he may not scale any particular item or items by deducting a certain per cent of the amount appropriated by the legislature in a bill which because of adjournment could not be

returned to it for further action, since by so doing he would be exercising creative legislative power and usurping the function of the legislative assembly. Veto Case, 69 Mont. 325, 35 A. L. R. 592, 222 Pac. 428.

Cited in State ex rel. Bonner v. Dixon et al., 95 Mont. 58, 77, 195 Pac. 841.

For text treatment of this subject see vol. 23 Cal. Jur. 554.

Disapproval of appropriation bill in part or with modifications, note, 35 A. L. R. 600.

Sec. 14.

Power to pardon or commute sentence as one which devolves upon the lieutenant-governor during the absence or disability of the governor, note, 32 A. L. R. 1162.

Sec. 20.

House Bill No. 398, L. 1925, page 416, referring the matter of the claim against the state for personal injuries sustained through the negligence of its agent to the state board of examiners, for adjustment, does not transgress the provision of this section of the constitution, that no claim against the state shall be passed upon by the legislative assembly unless first considered by said board. Mills v. Stewart, 76 Mont. 429, 247 Pac. 332.

Cited in State ex rel. Jones v. Erickson, 75 Mont. 429, 457, 244 Pac. 287; Porter v. Hartley et al., 67 Mont. 244, 251, 216 Pac. 344; State v. State Board of Examiners, 59 Mont. 557, 558, 197 Pac. 988.

ARTICLE VIII.

JUDICIAL DEPARTMENT.

Section 1.

Cited in Marcellus v. Wright et al., 61 Mont. 274, 287, 202 Pac. 381.

For text treatment of this subject see vol. 7 Cal. Jur. 662.

Encroachment on judicial power by statute making mere filing of affidavit of bias or prejudice sufficient to disqualify, note, 5 A. L. R. 1275.

Power of legislature to set aside or impair judgment, note, 3 A. L. R. 450.

Statute creating municipal liability for mob or riot as usurpation of judicial powers, note, 13 A. L. R. 758.

Statute providing for revocation of license of physician or surgeon, or dentist as encroachment on judicial power, note, 5 A. L. R. 94.

Statute restricting injunction in industrial disputes as encroachment on judicial power, note, 27 A. L. R. 411; 35 A. L. R. 460.

Constitutionality of statute forbidding direction of verdict or nonsuit, note, 29 A. L. R. 1287.

Sec. 5.

Cited in Tax Commission Case, 68 Mont. 450, 466, 219 Pac. 817; Gas Products Co. v. Rankin, 63 Mont. 372, 396, 24 A. L. R. 294, 207 Pac. 993.

For text treatment of this subject see vol. 7 Cal. Jur. 664.

Sec. 7.

Cited in *Marcellus v. Wright et al.*, 61 Mont. 274, 286, 202 Pac. 381.

Sec. 8.

Cited in *Marcellus v. Wright et al.*, 61 Mont. 274, 286, 202 Pac. 381.

Sec. 9.

Cited in *Marcellus v. Wright et al.*, 61 Mont. 274, 286, 202 Pac. 381.

Per diem compensation of court clerk, note, 1 A. L. R. 280, 290.

Incompatibility of office of clerk of court and office in the military service, note, 26 A. L. R. 144, 145.

Sec. 11.

Cited in *State ex rel. Stewart v. District Court*, 77 Mont. 361, 371, 251 Pac. 137; *In re Lockhart*, 72 Mont. 136, 139, 232 Pac. 183; *State ex rel. Carroll v. District Court*, 69 Mont. 415, 420, 222 Pac. 444; *Atkinson v. Roosevelt County et al.*, 66 Mont. 411, 425, 214 Pac. 74; *State v. Sorenson*, 65 Mont. 65, 68, 210 Pac. 752; *State ex rel. Weisz v. District Court et al.*, 61 Mont. 427, 432, 202 Pac. 387.

For text treatment of this subject see vol. 7 Cal. Jur. 683.

Sec. 12.

Where the term of a district judge expired at midnight in December, the day preceding the first Monday in January following the general election at which his successor had been elected, an order denying a motion for a new trial made by him, on December 31st, but which he was prevented from lodging with the clerk because, when attempting to do so he found the office closed for the day, handed by him to the clerk on January 3d following, with directions to enter it as of December 31st, was his personal act and void, he then no longer being vested with judicial authority. *Marcellus v. Wright et al.*, 61 Mont. 274, 202 Pac. 381.

Cited in *Rowan v. Gazette Printing Co. et al.*, 69 Mont. 170, 173, 220 Pac. 1104.

Sec. 13.

Cited in *Cashman v. Vickers et al.*, 69 Mont. 516, 527, 223 Pac. 897.

Sec. 15.

Cited in *Stabler v. Porter*, 72 Mont. 62, 65, 232 Pac. 187; *State Bank of*

New Salem v. Schultze, 63 Mont. 410, 417, 209 Pac. 599.

Sec. 17.

Cited in *Cashman v. Vickers et al.*, 69 Mont. 516, 527, 223 Pac. 897.

For text treatment of this subject see vol. 7 Cal. Jur. 606.

Sec. 18.

Cited in *State ex rel. Corry v. Cooney et al.*, 70 Mont. 355, 363, 225 Pac. 1007.

Per diem compensation of court clerks, note, 1 A. L. R. 280, 290.

Sec. 19.

Cited in *State ex rel. Corry v. Cooney et al.*, 70 Mont. 355, 363, 225 Pac. 1007; *State v. Vuckovich*, 61 Mont. 480, 491, 203 Pac. 491.

For text treatment of this subject see vol. 9 Cal. Jur. 594.

Incompatibility of offices of district attorney and captain of volunteers, note, 26 A. L. R. 145.

Sec. 20.

Cited in *State ex rel. Corry v. Cooney et al.*, 70 Mont. 355, 363, 225 Pac. 1007; *Cashman v. Vickers et al.*, 69 Mont. 516, 521, 223 Pac. 897.

For text treatment of this subject see vol. 15 Cal. Jur. 463.

Sec. 21.

"Concurrent jurisdiction," within the meaning of this section, conferring concurrent jurisdiction with district courts upon justices of the peace courts, means that justices' courts are authorized equally with district courts, to try such actions, at the choice of the suitors. *Cashman v. Vickers et al.*, 69 Mont. 516, 223 Pac. 897.

The provision of this section conferring upon justice of the peace courts concurrent jurisdiction with district courts in cases of forcible entry and unlawful detainer actions, is not limited by the provision of section 20 of this article declaring that justices' courts shall not have jurisdiction in any case where the debt, claim, etc., exceeds the sum of \$300, but that as to forcible entry and unlawful detainer actions their jurisdiction is unlimited in so far as money demands are concerned. *Cashman v. Vickers et al.*, 69 Mont. 516, 223 Pac. 897.

Cited in *Doggett v. Johnson*, 72 Mont. 443, 448, 234 Pac. 252; *State ex rel. Skrukud v. District Court et al.*, 71 Mont. 570, 574, 230 Pac. 1089; *Lambert v. Helena Adjustment Co.*, 69 Mont. 510, 514, 222 Pac. 1057; *State v. Sorenson*, 65 Mont. 65, 69, 210 Pac. 752.

For text treatment of this subject see vol. 15 Cal. Jur. 464-468.

Power of justice of peace to take affidavit as basis for warrant of arrest, note, 16 A. L. R. 923.

Sec. 26.

Cited in *State ex rel. Corry v. Cooney et al.*, 70 Mont. 355, 364, 225 Pac. 1007.

For text treatment of this subject see vol. 7 Cal. Jur. 617.

Sec. 28.

Cited in *State ex rel. Stewart v. District Court*, 77 Mont. 361, 372, 251 Pac. 137.

For text treatment of this subject see vol. 1 Cal. Jur. 309.

Sec. 35.

Incompatibility of office of judge and office in military service, note, 26 A. L. R. 143.

ARTICLE IX.

RIGHTS OF SUFFRAGE AND QUALIFICATIONS TO HOLD OFFICE.

Section 2.

The absent voters law, in permitting a ballot to be delivered to the election officers by mail, does not violate this section. *Goodell v. Judith Basin County et al.*, 70 Mont. 222, 224 Pac. 1110.

For text treatment of this subject see vol. 10 Cal. Jur. 46.

Absent voters laws, notes, 14 A. L. R. 1265; 19 A. L. R. 308; 35 A. L. R. 819.

Validity of statute requiring information as to residence as condition of right to vote, note, 14 A. L. R. 260.

Sec. 10. All persons possessing the qualifications for suffrage prescribed by section 2 of this article as amended and such other qualifications as the legislative assembly may by law prescribe, shall be eligible to hold the office of county superintendent of schools or any other school district office.

Section 10 of article IX of the constitution was enacted as chapter 97, L. 1923; ratified by the people at the election November 4, 1924, effective under governor's proclamation December 9, 1924.

Sec. 11.

Cited in *State ex rel. Shea v. Cocking*

Sec. 3.

Cited in *State ex rel. Johnson v. Kassing*, 74 Mont. 25, 30, 238 Pac. 582.

For text treatment of this subject see vol. 10 Cal. Jur. 49-51.

Residence or domicile of student or teacher for purposes of voting, note, 37 A. L. R. 138.

Sec. 4.

Cited in *Goodell v. Judith Basin County et al.*, 70 Mont. 222, 236, 224 Pac. 1110.

et al., 66 Mont. 169, 173, 28 A. L. R. 772, 213 Pac. 594.

For text treatment of this subject see vol. 21 Cal. Jur. 832.

Mental and physical disability as disqualification to hold office, note, 28 A. L. R. 777.

ARTICLE X.

STATE INSTITUTIONS AND PUBLIC BUILDINGS.

Section 4.

Cited in *State ex rel. Bonner v. Dixon et al.*, 59 Mont. 58, 77, 195 Pac. 841.

ARTICLE XI.

EDUCATION.

Section 7.

For text treatment of this subject see vol. 23 Cal. Jur. 141.

Expulsion or suspension for violation of regulation as to clothes or personal appearance of pupils, notes, 18 A. L. R. 649; 30 A. L. R. 1216.

Sec. 9.

For text treatment of this subject see vol. 23 Cal. Jur. 159.

Sectarianism in schools, note, 20 A. L. R. 1381.

ARTICLE XII.

REVENUE AND TAXATION.

Section 1.

Absolute uniformity or equality in the imposition of a tax being unattainable, courts will not declare a statute invalid as in contravention of this section of the constitution, unless it is made to appear that it was framed on a plan or principle not calculated to produce uniformity or equality, or that its administration will result in such flagrant injustice as to evidence an entire disregard of the constitutional requirement. *Anaconda Copper Mining Co. v. Junod*, 71 Mont. 132, 227 Pac. 1001.

The tax imposed by section 2441 upon a manufacturer is the license or occupation tax provided for by the last sentence of this section and is not controlled by the uniformity clause contained in section 11 of this article, hence such license tax may be graduated according to the amount of business done and is not for that reason open to attack as being discriminatory. *State v. Hennessy Co.*, 71 Mont. 301, 230 Pac. 64.

This section and section 11 of the same article, providing for a uniform rate of taxation, and that taxes shall be levied and collected for public purposes only, relate to taxation for governmental purposes and have no reference to assessments for special improvements such as contemplated by the creation of an irrigation district. *Walden v. Bitter Root Irr. Dist.*, 68 Mont. 281, 217 Pac. 646.

Since under this section, the legislative assembly may impose a license tax upon persons and corporations doing business in the state, and taxation is the rule and exemption the exception, one so doing business and attacking such a tax on the ground that he is exempt has the burden of showing that he comes within some definite exception to the rule. *Mid-Northern Oil Co. v. Walker et al.*, 65 Mont. 414, 211 Pac. 353.

Cited in *State ex rel. Jones v. Erickson*, 75 Mont. 429, 452, 244 Pac. 287; *State v. Sunburst Refining Co.*, 73 Mont. 68, 77, 235 Pac. 428; *State ex rel. Hinz v.*

Moody, 71 Mont. 473, 478, 230 Pac. 575; *State v. Pepper*, 70 Mont. 596, 601, 226 Pac. 1108; *State ex rel. Rankin v. District Court*, 70 Mont. 322, 330, 225 Pac. 804; *State ex rel. Rankin v. Harrington*, 68 Mont. 1, 16, 217 Pac. 681; *State ex rel. Pierce v. Gowdy*, 62 Mont. 119, 130, 203 Pac. 1115; *Union Bank & Trust Co. v. Moore*, 62 Mont. 132, 135, 204 Pac. 361; *Stoner v. Timmons et al.*, 59 Mont. 158, 160, 196 Pac. 519; *State ex rel. Bonner v. Dixon et al.*, 59 Mont. 58, 80, 195 Pac. 841.

For text treatment of this subject see vol. 24 Cal. Jur. 124.

Assessment of corporate property at full value according to law when valuations generally are illegally fixed lower, notes, 3 A. L. R. 1370; 23 A. L. R. 983.

Discrimination by license tax on brokers, note, 8 A. L. R. 424.

Classification of coal for purposes of taxation, note, 24 A. L. R. 1225.

License taxes on automobiles, notes, 5 A. L. R. 759; 24 A. L. R. 937.

Business or profession as "property" as used in provision as to uniformity of taxes, note, 34 A. L. R. 719.

Equality and uniformity in taxation of newspapers, or magazines, note, 35 A. L. R. 11.

Sec. 2.

This section, prescribing the property which shall be absolutely exempt from taxation and the class which may be exempt if exclusively used for certain designated purposes, must be strictly construed. *Town of Cascade v. County of Cascade*, 75 Mont. 304, 243 Pac. 806.

Where a mortgagee bequeathed a sum of money and a mortgage on land for town library purposes, the will providing that the trust fund thus created should be administered by trustees for the use and benefit of the town, and the mortgagor in lieu of foreclosure gave a deed for the property to the trustees of the town—the cestui que trust—the property became that of the town, and not that

of the trust, and was therefore exempt from taxation under this section. *Town of Cascade v. County of Cascade*, 75 Mont. 304, 243 Pac. 806.

The constitutional provision prescribing what property shall or may be exempt from taxation is broad enough to include every kind of property—real, personal and mixed—capable of private ownership, under the definition of “property” contained in section 17 of the same article; therefore the contention that, under a strict construction, it must be construed as meaning the unqualified ownership of land merely has no merit. *Town of Cascade v. County of Cascade*, 75 Mont. 304, 243 Pac. 806.

Cited in *East Helena State Bank v. Rogers*, 73 Mont. 210, 218, 236 Pac. 1090.

Sections 2 and 5 of this article were cited in *State ex rel. Corry v. Cooney et al.*, 70 Mont. 355, 363, 225 Pac. 1007; *Union Bank & Trust Co. v. Moore*, 62 Mont. 132, 135, 204 Pac. 361; *Stoner v. Timmons et al.*, 59 Mont. 158, 160, 196 Pac. 519.

For text treatment of this subject see vol. 24 Cal. Jur. 87 et seq.

Bond or warrant of governmental subdivision as subject of exemption, notes, 44 A. L. R. 510; 26 A. L. R. 547.

Exemption of shares in foreign corporation owned by resident, note, 43 A. L. R. 686.

Exemption from taxation of property of fraternal or relief association, notes, 38 A. L. R. 36; 22 A. L. R. 907.

Exemption of charitable organizations, note, 34 A. L. R. 636.

Exemption of religious body or society, notes, 28 A. L. R. 861; 17 A. L. R. 1027.

Exemption of Y. M. C. A. or Y. W. C. A., note, 34 A. L. R. 1067.

State power to free government securities or property from taxation as affected by constitutional enumeration of subjects of taxation, note, 9 A. L. R. 436.

Exemption from taxation of particular educational, religious or charitable institution, note, 2 A. L. R. 471.

Exemption from taxation of property of labor organization, note, 23 A. L. R. 813.

Exemption from taxation of property which religious or charitable body has no right to hold, note, 27 A. L. R. 1047.

Exemption of parsonage or residence of minister or priest, note, 13 A. L. R. 1196.

Sec. 3.

The purpose of the framers of the constitution in adopting this section, was to provide a special method for the assessment and taxation of mining property, the theory adopted being that such

property should be regarded real as to surface value, and personal as to the subsurface contents. *State ex rel. Hinz v. Moody*, 71 Mont. 473, 230 Pac. 575.

The words “as provided by law” appearing in the second clause of this section, of the constitution, providing for the taxation of the surface ground of mining property used for other than mining purposes, has reference to that clause and do not qualify the preceding one declaring that mining claims containing coal, etc., shall be taxed at the price paid the United States therefor. *State ex rel. Hinz v. Moody*, 71 Mont. 473, 230 Pac. 575.

Coal lands purchased from the federal government must be taxed under this section at the price paid therefor and not at thirty per cent of such purchase price, the rate at which real property is taxable under the Classification Act (secs. 1900 and 2000). *State ex rel. Hinz v. Moody*, 71 Mont. 473, 230 Pac. 575.

A construction of sections 2344-2355, relating to net proceeds in the light of sections 2088-2096, relating to the taxation of net proceeds, holding certain expenses not allowable as a part of the cost of mining, does not violate the provision of this section of the constitution providing that the annual net proceeds of mines and mining claims shall be taxed “as provided by law,” nor the provision of section 1 of that article requiring the legislature to levy a uniform rate of assessment and taxation under such regulations as shall secure a just valuation of all property. *Anaconda Copper Mining Co. v. Junod*, 71 Mont. 132, 227 Pac. 1001.

That inequalities may result from a holding that coal lands purchased from the United States must be taxed at the price paid therefor as declared by this section of the constitution, does not justify a court to hold otherwise. *State ex rel. Hinz v. Moody*, 71 Mont. 473, 230 Pac. 575.

Cited in *Northern Pacific Ry. Co. v. Musselshell County*, 74 Mont. 81, 83, 238 Pac. 872; *Butt & Superior Mining Co. v. McIntyre*, 71 Mont. 254, 260, 229 Pac. 730; *Union Bank & Trust Co. v. Moore*, 62 Mont. 132, 135, 204 Pac. 361.

Valuing undeveloped mining property as prospect for purpose of taxation, note, 2 A. L. R. 1550.

Sec. 4.

Section 4482, providing that the board of county commissioners must let the county printing to a newspaper in existence for a year or more, even though its bid be higher than that of one not published for that length of time, does not contravene the provisions of this

section prohibiting the levying of taxes upon the inhabitants or property in any county for municipal purposes. *State ex rel. Woare v. Board of Commrs.*, 70 Mont. 252, 225 Pac. 389.

A "tax" within the meaning of this section of the constitution is an enforced contribution of money or other property, assessed in accordance with some reasonable rule of apportionment by authority of a sovereign on persons or property within its jurisdiction for the purpose of defraying the public expense. *State ex rel. Pierce v. Gowdy*, 62 Mont. 119, 203 Pac. 1115.

Cited in *State v. Pepper*, 70 Mont. 596, 602, 226 Pac. 1108; *Wibaux Improvement Co. v. Breitenfeldt*, 67 Mont. 206, 208, 215 Pac. 222.

For text treatment of this subject see vol. 18 Cal. Jur. 805; vol. 24 Cal. Jur. 61.

Sec. 5.

Cited in *State ex rel. Corry v. Cooney et al.*, 70 Mont. 355, 363, 225 Pac. 1007.

Sec. 6.

Cited in *State ex rel. Corry v. Cooney et al.*, 70 Mont. 355, 363, 225 Pac. 1007.

Sec. 7.

Cited in *East Helena State Bank v. Rogers*, 73 Mont. 210, 212, 236 Pac. 1090; *Union Bank & Trust Co. v. Moore*, 62 Mont. 132, 136, 204 Pac. 361.

Sec. 9.

Cited in *Stoner v. Timmons et al.*, 59 Mont. 158, 161, 196 Pac. 519.

Sec. 10.

Under the rule that that is certain which can be made certain, sections 5623.1-5623.8 do not violate the provision of this section as appropriating an indefinite sum for payment of principal and interest of state treasury notes, the payments to be made being readily ascertainable by mathematical calculation. *State ex rel. Toomey v. Board of Examiners*, 74 Mont. 1, 238 Pac. 316.

This section and section 12 cited in *State ex rel. Bonner v. Dixon et al.*, 59 Mont. 58, 77, 78, 195 Pac. 841.

For text treatment of this subject see vol. 23 Cal. Jur. 546.

Absence of appropriation as defense to mandamus to compel payment of salary of public officer or employee, note, 5 A. L. R. 579.

Sec. 11.

This section of the constitution, providing that taxes shall be levied and collected by general laws and for public purposes only, and shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax, relates to property taxes only, and not to such as are imposed on inheritances. *State ex rel. Rankin v. District Court*, 70 Mont. 322, 225 Pac. 804.

This section and section 1 of this article relate to taxation for governmental purposes and have no reference to assessments for special improvements such as contemplated by the creation of an irrigation district. *Walden v. Bitter Root Irr. Dist.*, 68 Mont. 281, 217 Pac. 646.

The words "public purposes" as used in this section of the state constitution, providing that taxes shall be collected for public purposes only, are synonymous with "governmental purposes." *State ex rel. Mills v. Dixon et al.*, 66 Mont. 76, 213 Pac. 227.

Special assessments for the construction and maintenance of drainage works are not taxes within the meaning of this section, providing that taxes shall be uniform upon the same class of subjects, and hence that provision has no application. In re *Valley Center Drain District*, 64 Mont. 545, 211 Pac. 218.

Cited in *Mills v. Stewart*, 76 Mont. 429, 438, 247 Pac. 332; *Thaanum v. Bynum Irr. District*, 72 Mont. 221, 228, 232 Pac. 528; *State v. Hennessy Co.*, 71 Mont. 301, 307, 230 Pac. 64; *State ex rel. Pierce v. Gowdy*, 62 Mont. 119, 129, 203 Pac. 1115.

For text treatment of this subject see vol. 24 Cal. Jur. 124.

Statute refusing to corporation deductions allowed to individual taxpayer, note, 42 A. L. R. 1049.

Discrimination between par value stock corporations and nonpar value stock corporations, notes, 36 A. L. R. 795; 45 A. L. R. 1505.

Equality and uniformity in taxation of newspapers and magazines, note, 35 A. L. R. 11.

License tax on real estate brokers as within constitutional provision that taxation should be uniform, note, 8 A. L. R. 425.

Assessment of corporate property at full value according to law when valuations generally are illegally fixed lower, note, 3 A. L. R. 1370.

Sec. 12.

Section 2148, increasing the tax levy for state purposes by one and one-half mills for the period of ten years and directing successive legislatures for that

period how the proceeds thereof shall be appropriated, and authorizing the assembly to make the appropriations for each of the ten years, is not unconstitutional as appropriating money for ten years, or at all, in violation of this section, prohibiting the making of appropriations for more than two years. (The question whether direction to successive legislatures as to how money shall be appropriated is binding upon such bodies, reserved.) State ex rel. Jones v. Erickson, 75 Mont. 429, 244 Pac. 287.

Under the showing made on application for writ of injunction against the state board of examiners, held that the appropriations made by the legislature for the years 1925 and 1926 for the four teaching units comprising the university of Montana do not exceed the amount received from the one and one-half mill levy authorized by section 2148, for their maintenance, and therefore do not transgress the provision of this section,

prohibiting appropriations exceeding the total tax provided by law. State ex rel. Jones v. Erickson, 75 Mont. 429, 244 Pac. 287.

The provision of this section of the constitution, that no appropriations shall be made in excess of the total tax provided for by law during any fiscal year, must be interpreted to refer not only to the money raised by direct taxation but also to anticipated income from all other sources. State ex rel. Toomey v. Board of Examiners, 74 Mont. 1, 238 Pac. 316.

Cited in State ex rel. Mills v. Dixon et al., 66 Mont. 76, 96, 213 Pac. 227; State ex rel. Bonner v. Dixon et al., 59 Mont. 58, 78, 195 Pac. 841.

Sec. 14.

Cited in State ex rel. Rankin v. Madison State Bank, 68 Mont. 342, 347, 218 Pac. 652.

Sec. 15. The board of county commissioners of each county shall constitute the county board of equalization. The duties of such board shall be to adjust and equalize the valuation of taxable property within their respective counties, and all such adjustments and equalizations may be supervised, reviewed, changed, increased or decreased by the state board of equalization. The state board of equalization shall be composed of three members who shall be appointed by the governor, by and with the advice and consent of the senate. A majority of the members of the state board of equalization shall constitute a quorum. The term of office of one of the members first appointed shall end on March 1, 1925, of another first appointed on March 1, 1927, and of the third first appointed on March 1, 1929. Each succeeding member shall hold his office for the term of six years, and until his successor shall have been appointed and qualified. In case of a vacancy the person appointed to fill such vacancy shall hold office for the unexpired term in which the vacancy occurs. The qualifications and salaries of the members of the state board of equalization shall be as provided by law, provided, however, that such members shall be so selected that the board will not be composed of more than two persons who are affiliated with the same political party or organization; provided, further, that each member shall devote his entire time to the duties of the office and shall not hold any position of trust or profit, or engage in any occupation or business interfering or inconsistent with his duties as a member of such board, or serve on or under any committee of any political party or organization, or take part, either directly or indirectly, in any political campaign in the interest of any political party or organization or candidate for office. The state board of equalization shall adjust and equalize the valuation of taxable property among the several counties, and the different classes of taxable property in any county and in the several counties and between individual taxpayers; supervise and review the acts of the county assessors and county boards of equalization; change, increase, or decrease valuations made by county assessors or equalized by county boards of equalization;

and exercise such authority and do all things necessary to secure a fair, just and equitable valuation of all taxable property among counties, between the different classes of property, and between individual taxpayers. Said state board of equalization shall also have such other powers, and perform such other duties relating to taxation as may be prescribed by law.

Section 15 of article XII of the constitution was enacted by the legislature (Ch. 11, Ex. L. 1921), and was ratified by the people at the election of November 7, 1922, effective under proclamation of the governor December 14, 1922.

The legislature could properly add powers additional to those specifically conferred by this section upon the state Board of Equalization, as it did by sections 2089-2096 by imposing upon the board the duty to assess net proceeds of mines. *Butte & Superior Mining Co. v. McIntyre*, 71 Mont. 254, 229 Pac. 730.

An amendment to this section was held valid although not entered in full in the journal of the senate. *Tax Commission Case*, 68 Mont. 450, 219 Pac. 817.

Cited in *State v. State Board of Equalization*, 67 Mont. 340, 351, 215 Pac. 667; *Beiknap Realty Co. v. Simineo et al.*, 67 Mont. 359, 362, 215 Pac. 659.

For text treatment of this subject see vol. 24 Cal. Jur. 225 et seq.

Action of board of equalization as affecting right to attack assessment on ground of assessor's fraud, note, 9 A. L. R. 1277.

Notice to property owners of increase in assessment by board of equalization, note, 24 A. L. R. 331.

Sec. 16.

Snowsheds constructed of reinforced concrete and steel, with timber roofs, the walls of which on the mountain-side of the track were imbedded in the ground four feet or more, the outer walls consisting of a series of piers grounded in holes from a foot to twelve feet deep, held part of defendant railway company's roadbed, and as such assessable, under this section by the state board of equalization and not by the county assessor. *Great Northern Ry. Co. v. Flathead County*, 61 Mont. 263, 202 Pac. 198.

Cited in *Butte & Superior Mining Co. v. McIntyre*, 71 Mont. 254, 259, 229 Pac. 730; *State ex rel. Hinz v. Moody*, 71 Mont. 473, 485, 230 Pac. 575; *State ex rel. Northern Pacific Ry. Co. v. Duncan*, 68 Mont. 420, 423, 219 Pac. 638.

This section and sections 2, 9 and 17 of this article were cited in *Stoner v. Timmons et al.*, 59 Mont. 158, 160, 196 Pac. 519.

For text treatment of this subject see vol. 24 Cal. Jur. 404.

Sec. 17.

This section forbids the taxation of the capital stock of a state bank where the property represented by such stock is within the state and liable to taxation. *Union Bank & Trust Co. v. Moore*, 62 Mont. 132, 204 Pac. 361.

Chapter 89, L. 1919, providing for the classification of land for taxation purposes, was held to contravene this section of the constitution. *Stoner v. Timmons et al.*, 59 Mont. 158, 196 Pac. 519.

Cited in *Town of Cascade v. County of Cascade*, 75 Mont. 304, 310, 243 Pac. 806; *East Helena State Bank v. Rogers*, 73 Mont. 210, 217, 236 Pac. 1090; *State ex rel. Hinz v. Moody*, 71 Mont. 473, 480, 230 Pac. 575; *State ex rel. Rankin v. Harrington*, 68 Mont. 1, 16, 217 Pac. 681; *Union Bank & Trust Co. v. Moore*, 62 Mont. 132, 136, 204 Pac. 361.

For text treatment of this subject see vol. 24 Cal. Jur. 72.

Leasehold interest in exempt property as subject of tax, note, 23 A. L. R. 248.

Oil and gas rights or privileges as subject to taxation, notes, 16 A. L. R. 513; 29 A. L. R. 606.

Taxation of chattels and conditional sale contracts or title retaining notes, note, 12 A. L. R. 566.

Taxation of bond or warrant of governmental subdivision, notes, 26 A. L. R. 547; 44 A. L. R. 510.

Taxation of foreigners as proper subject of treaty regulation, notes, 4 A. L. R. 1891; 17 A. L. R. 636.

Taxation of insurance reserves, note, 13 A. L. R. 186.

Franchise or excise tax on corporation in hands of receiver, notes, 18 A. L. R. 700; 26 A. L. R. 426.

Business or profession as "property" which may be taxed, note, 34 A. L. R. 719.

Legal nature of Massachusetts trusts for purposes of taxation, note, 31 A. L. R. 859.

Shares owned by resident in a foreign corporation as subject of property tax, note, 43 A. L. R. 686.

ARTICLE XIII.

PUBLIC INDEBTEDNESS.

Section 1.

The taxes which an irrigation district is authorized to levy upon the lands included in the district for the purpose of paying for property acquired are in the nature of special assessments as distinguished from general taxes, and by the expenditure of moneys authorized by section 7174, it obtains an equivalent in the value of the property purchased, hence does not come within the prohibition of this section of the constitution, above. *Thaanum v. Bynum Irr. Dist.*, 72 Mont. 221, 232 Pac. 528.

The purpose of the constitutional provision prohibiting the state, counties, cities, etc., from loaning their credit to individuals or corporations or becoming shareholders in or joint owners with companies or corporations is to prevent the use of public funds raised by general taxation in aid of enterprises apparently devoted to quasi-public purposes, but actually engaged in private business. *Thaanum v. Bynum Irr. Dist.*, 72 Mont. 221, 232 Pac. 528.

An irrigation district is not a "sub-division" of the state within the meaning of this section of the constitution, providing that neither county, city, town, municipality "nor other subdivision of the state shall become a shareholder in or a joint owner with a company or corporation, and therefore its board of commissioners may acquire shares in a reservoir company or purchase rights to the use of water, as authorized by section 7174. *Thaanum v. Bynum Irr. Dist.*, 72 Mont. 221, 232 Pac. 528.

The inhibition of the state constitution against making donations by the state or any subdivision thereof or loaning its credit, to any individual, corporation, etc., is both mandatory and prohibitory, applicable alike to the legislative assembly and the people in their legislative capacity. *State ex rel. Mills v. Dixon et al.*, 66 Mont. 76, 213 Pac. 227.

The payment of a bounty to those who served in the military establishment of the United States during the World War, contemplated by chapter 162, Laws of 1921, by means of a tax levy for that purpose, is not for a public or governmental purpose but intended as a donation or gift contrary to the provision of this section of the constitution. *State ex rel. Mills v. Dixon et al.*, 66 Mont. 76, 213 Pac. 227.

Cited in *Mills v. Stewart*, 76 Mont. 429, 438, 247 Pac. 332.

Sections 1, 3, 5 and 6 of this article were cited in *State ex rel. Corry v.*

Cooney et al., 70 Mont. 355, 363, 225 Pac. 1007; *Swords v. Simineo et al.*, 68 Mont. 164, 178, 216 Pac. 806.

For text treatment of this subject see vol. 23 Cal. Jur. 556.

Appropriation or raising of public funds for distribution by chamber of commerce, note, 31 A. L. R. 495.

Constitutionality of retroactive statute providing compensation for death in service of state, note, 28 A. L. R. 1100.

Pensions for municipal employees, 37 A. L. R. 1161.

Old age pension or assistance acts, note, 37 A. L. R. 1524.

Appropriation of public funds for patriotic celebrations, note, 30 A. L. R. 1039.

Constitutionality of statute authorizing state to loan its credit, note, 14 A. L. R. 1165.

Power of legislature to grant extra compensation for past services of individual public officer or employee, note, 23 A. L. R. 612.

Right to use public funds to carry insurance for public officers or employees, notes, 16 A. L. R. 1089; 27 A. L. R. 1267.

Power to impose license fee or penalty for benefit of private individual or corporation, note, 13 A. L. R. 828.

Constitutionality of statute or ordinance authorizing use of public funds for restoration or repair of privately owned public utility, note, 13 A. L. R. 313.

Constitutionality of statute providing for free text-books for individual use of pupils, note, 17 A. L. R. 299.

Constitutionality of statutes providing for bounty or pensions for soldiers, notes, 7 A. L. R. 1636; 13 A. L. R. 587; 15 A. L. R. 1359.

Constitutionality of welfare acts for veterans of World War, note, 22 A. L. R. 1542.

Sec. 2.

By the issuance of state treasury notes to secure funds to pay outstanding registered warrants, no new debt is created within the meaning of this section of the constitution, the effect of their authorization being merely to change the evidence of indebtedness from warrants to treasury notes. *State ex rel. Toomey v. Board of Examiners*, 74 Mont. 1, 238 Pac. 316.

The provision of this section of the constitution, prohibiting the creation of a debt exceeding singly or in the aggregate with existing debts the sum of

\$100,000, unless authorized by the people at a general election, was not intended to apply to an issue of treasury notes to refund outstanding warrants issued for current state expenses. *State ex rel. Toomey v. Board of Examiners*, 74 Mont. 1, 238 Pac. 316.

The debt or liability the incurring of which is prohibited by this section without a majority approval by the people at a general election is one which singly or in the aggregate will obligate the state to an amount in excess of \$100,000 cash on hand and revenues provided by the legislature for the two years intervening between sessions of the assembly, since revenue for which provision has been made may constructively be considered as cash on hand. *State v. State Board of Examiners*, 59 Mont. 557, 197 Pac. 988.

The fact that sections 5606-5614 are indefinite as to the time during which they shall be operative and the tax levy provided for is limited does not render them violative of this section, the question whether the tax provided for prove to be sufficient or insufficient to pay principal and interest on the bonds being one addressed to legislative action, in the absence of an affirmative showing that it is not sufficient. *State ex rel. Bonner v. Dixon et al.*, 59 Mont. 58, 195 Pac. 841.

For text treatment of this subject see vol. 23 Cal. Jur. 566.

Sec. 3.

Cited in *State ex rel. Corry v. Cooney et al.*, 70 Mont. 355, 363, 225 Pac. 1007; *State v. Poland et al.*, 61 Mont. 600, 605, 203 Pac. 352.

Sec. 5.

This section is not a grant of power to counties to incur indebtedness but merely fixes the maximum limit of indebtedness permissible; therefore the legislature, not being prohibited by the constitution from doing so, may, as it did by enacting chapter 21, Laws of 1923, fix a lower limit than that prescribed. *Heckman v. Custer County et al.*, 70 Mont. 84, 223 Pac. 916.

The words "single purpose" as used in this section, providing that "no county shall incur any indebtedness or liability for any single purpose to an amount exceeding \$10,000 without the approval of a majority of the electors thereof," mean a project or undertaking, the elements entering into which are so related that when combined they constitute an entity—something complete in itself, but separate and apart from other objects. *State ex rel. Turner v. Patch et al.*, 64 Mont. 565, 210 Pac. 748.

Under the above rule, county indebtedness evidenced by warrants issued in payment of separate contracts for the construction, repair, improvement and maintenance of certain portions of the public roads and bridges at different and widely scattered places in a county containing more than two thousand square miles and having three hundred and twelve established public roads extending over every part of the county, did not constitute an indebtedness for a "single purpose" or undertaking within the meaning of this section, even though the different points at which the work was done were connected by its public roads; held, further, that each piece of work, the cost of none of which exceeded \$10,000, was an entity in itself, and that therefore warrants issued in payment thereof were not void, the contention on application for injunction that all of the county roads constituted a single system and that therefore warrants issued for work done on all of them combined was an indebtedness for a single purpose in excess of \$10,000 being without merit. *State ex rel. Turner v. Patch et al.*, 64 Mont. 565, 210 Pac. 748.

County commissioners may not, by making arbitrary or artificial divisions of road work which manifestly constitutes but one project, and by issuing separate warrants to separate contractors for separate units thus created, evade the prohibition of this section. *State ex rel. Turner v. Patch et al.*, 64 Mont. 565, 210 Pac. 748.

Cited in *State ex rel. Corry v. Cooney et al.*, 70 Mont. 355, 363, 225 Pac. 1007; *State ex rel. Rankin v. State Board of Examiners*, 59 Mont. 557, 197 Pac. 988.

For text treatment of this subject see vol. 7 Cal. Jur. 525.

Permanent improvements as within constitutional provision against county exceeding current revenue, note, 41 A. L. R. 790.

Sec. 6.

Cited in *First Nat. Bank v. County of Dawson*, 74 Mont. 439, 448, 240 Pac. 981; *State ex rel. Corry v. Cooney et al.*, 70 Mont. 355, 363, 225 Pac. 1007; *First Nat. Bank of Glendive v. Sorenson*, 65 Mont. 1, 13, 210 Pac. 900.

For text treatment of this subject see vol. 18 Cal. Jur. 878.

Statute creating municipal liability for mob or riot as within constitutional debt limitation, note, 13 A. L. R. 757.

Liability of municipality for failure to collect cost of local improvements from property primarily liable as affected by limitation of indebtedness, note, 38 A. L. R. 1277.

ARTICLE XIV. MILITARY AFFAIRS.

Section 1.

Cited in *State ex rel. Rankin v. District Court*, 70 Mont. 322, 327, 225 Pac. 804.

For text treatment of this subject see vol. 17 Cal. Jur. 245.

Sec. 2.

Cited in *State ex rel. Mills v. Dixon et al.*, 66 Mont. 76, 86, 213 Pac. 227.

Sec. 3.

Cited in *State ex rel. Bonner v. Dixon et al.*, 59 Mont. 58, 78, 195 Pac. 841.

ARTICLE XV. CORPORATIONS OTHER THAN MUNICIPAL.

Section 2.

Cited in *Mid-Northern Oil Co. v. Walker et al.*, 65 Mont. 414, 429, 211 Pac. 353.

For text treatment of this subject see vol. 6 Cal. Jur. 611.

Sec. 4.

This section, declaring that every stockholder shall have the right to vote his shares at elections for directors, refers exclusively to domestic corporations. *Allen v. Montana Refining Co.*, 71 Mont. 105, 227 Pac. 582.

For text treatment of this subject see vol. 6 Cal. Jur. 887.

Power of directors to change time for regular meeting of stockholders, notes, 2 A. L. R. 558; 8 A. L. R. 678.

Right to issue nonvoting stock, note, 21 A. L. R. 643.

Sec. 5.

Cited in *City of Helena v. Helena Light & Ry. Co.*, 63 Mont. 108, 119, 207 Pac. 337.

Sec. 7.

Cited in *Doney v. Northern Pacific Ry. Co. et al.*, 60 Mont. 209, 226, 199 Pac. 432.

For text treatment of this subject see vol. 4 Cal. Jur. 831 et seq.

Discrimination in respect of extension of credit, note, 12 A. L. R. 964.

Franchise provisions for free or reduced passes as within constitutional provision prohibiting discrimination, notes, 10 A. L. R. 504; 15 A. L. R. 1200.

Discrimination by carrier between ships as to use of right of way or wharf, note, 44 A. L. R. 1526.

Sec. 9.

Cited in *State ex rel. McLeod v. Dis-*

trict Court, 67 Mont. 164, 168, 215 Pac. 240.

For text treatment of this subject see vol. 10 Cal. Jur. 34.

Sec. 10.

Under this section, a corporation cannot issue its stock except for labor done, services performed or money and property actually received. Plaintiff's complaint in his action to compel a corporation to issue and deliver to him certain shares of its stock under a contract with its promoters prior to its organization, showed that at the time it was made no labor could have been done or services performed for it, not having been then in existence, and the parties making it had no legal right to make a disposition of the company's capital stock after becoming a legal entity. Held, that the pleading did not state a cause of action. *Kirkup v. Anaconda Amusement Co.*, 59 Mont. 469, 17 A. L. R. 441, 197 Pac. 1005.

For text treatment of this subject see vol. 6 Cal. Jur. 743, 900.

Sec. 11.

Cessation by foreign corporation of business within state as affecting designation of agent for service of process, note, 45 A. L. R. 1447.

Sec. 12.

Cited in *City of Helena v. Helena Light & Ry. Co.*, 63 Mont. 108, 117, 207 Pac. 337.

For text treatment of this subject see vol. 23 Cal. Jur. 846.

Sec. 13.

Section 5939 of the Code, relieving directors of a corporation of the pen-

alty imposed by section 3837, Revised Codes of 1907, does not contravene this section of the constitution prohibiting the passing of retrospective laws for the benefit of a corporation or an individual. *Continental Oil Co. v. Montana C. Co.*, 63 Mont. 223, 207 Pac. 116.

Cited in *State ex rel. Rankin v. District Court*, 70 Mont. 322, 332, 225 Pac. 804.

Sec. 18.

Cited in *State ex rel. Butte etc. Co. v. District Court*, 75 Mont. 567, 579, 244 Pac. 489.

For text treatment of this subject see vol. 6 Cal. Jur. 579.

ARTICLE XVI.

MUNICIPAL CORPORATIONS AND OFFICERS.

Section 3.

A completed and used bridge belongs to the state and is not therefore "property of the county" within the meaning of this section. It was therefore beyond the power of the legislature by section 4398 to authorize the commissioners in adjusting indebtedness between a new and an old county, to take into consideration steel bridges constructed and in use for less than ten years. *State ex rel. Missoula County v. Brown et al.*, 73 Mont. 371, 236 Pac. 548.

"Property of the county" within the

meaning of this section, under which, when a new county is created, the net indebtedness of the old county, its ratable proportion of which the new one must pay, is to be determined by deducting from its total indebtedness the value of all property of the old county, means such property as a county holds and can sell. *State ex rel. Judith Basin County v. Poland et al.*, 61 Mont. 600, 203 Pac. 352.

For text treatment of this subject see vol. 7 Cal. Jur. 401.

Sec. 4. (Proposed Amendment.) In each county there shall be elected three county commissioners, whose term of office shall be six years; provided that each county in the state of Montana shall be divided into three commissioner districts, to be designated as commissioner districts, numbers one, two and three, respectively.

The board of county commissioners shall in every county in the state of Montana, at their regular session, on the first Monday in May, 1929, or as soon thereafter as convenient or possible, not exceeding sixty days thereafter, meet and by and under the direction of the district court judge or judges of said county, divide their respective counties into three commissioner districts as compact and equal in population and area as possible, and number them respectively, one, two and three, and when such division has been made, there shall be filed in the office of the county clerk and recorder of such county, a certificate designating the metes and bounds of the boundary lines and limits of each of said commissioners districts, which certificate shall be signed by said judge or judges; provided, also that at the first regular session of any newly organized and created county, the said board of county commissioners, by and under the direction of the district court judge or judges of said county, shall divide such new county into commissioner districts as herein provided.

Upon such division, the board of county commissioners shall assign its members to such districts in the following manner; each member of the said board then in service shall be assigned to the district in which he is residing or the nearest thereto; the senior member of the board in service to be assigned to the commissioner district No. 1, the next member in seniority to be assigned to commissioner district No. 2, and the junior member of the board to be assigned to commissioner district No. 3; provided, that at the first general election of any newly created and organized

county, the commissioner for district No. 1, shall be elected for two years, for No. 2, for four years, and for No. 3, for six years, and biennially thereafter there shall be one commissioner elected to take the place of the retiring commissioner, who shall hold his office for six years.

That the board of county commissioners by and under the direction of the district court judge or judges of said county, for the purpose of equalizing in population and area such commissioner districts, may change the boundaries of any or all the commissioner districts in their respective county, by filing in the office of the county clerk and recorder of such county, a certificate signed by said judge or judges designating by metes and bounds the boundary lines of each of said commissioner districts as changed, and such change in any or all the districts in such county, shall become effective from and after filing of such certificate; provided, however, that the boundaries of no commissioner district shall at any time be changed in such a manner as to affect the term of office of any county commissioner who has been elected, and whose term of office has not expired; and provided, further, that no change in the boundaries of any commissioner district shall be made within six months next preceding a general election.

At the general election to be held in 1930, and thereafter at each general election, the member or members of the board to be elected, shall be selected from the residents and electors of the district or districts in which the vacancy occurs, but the election of such member or members of the board shall be submitted to the entire electorate of the county, provided, however, that no one shall be elected as a member of said board, who has not resided in said district for at least two years next preceding the time when he shall become a candidate for said office.

When a vacancy occurs in the board of county commissioners the judge or judges of the judicial district in which the vacancy occurs, shall appoint someone residing in such commissioner district where the vacancy occurs, to fill the office until the next general election when a commissioner shall be elected to fill the unexpired term.

En. Sec. 1, Ch. 72, L. 1927.

Note.—The foregoing proposed amendment will be voted upon at the general election in November, 1928.

Sec. 5.

Cited in *Butte & Superior Mining Co. v. McIntyre*, 71 Mont. 254, 259, 229 Pac. 730.

For text treatment of this subject see vol. 7 Cal. Jur. 421.

Sec. 6.

The word "term" as used by this section of the constitution with reference to the election or appointment of municipal officers, and section 511, Revised Codes of 1921, applies to the office and not to the person holding it. *State ex rel. Morgan v. Knight*, 76 Mont. 71, 245 Pac. 267.

Sec. 7. The legislative assembly may, by general or special law, provide any plan, kind, manner or form of municipal government for counties, or counties and cities and towns, or cities and towns, and whenever deemed necessary or advisable, may abolish city or town government and unite, consolidate or merge cities and towns and county under one municipal government, and any limitations in this constitution notwithstanding, may designate the name, fix and prescribe the number, designa-

tion, terms, qualifications, method of appointment, election or removal of the officers thereof, define their duties and fix penalties for the violation thereof, and fix and define boundaries of the territory so governed, and may provide for the discontinuance of such form of government when deemed advisable; provided, however, that no form of government permitted in this section shall be adopted or discontinued until after it is submitted to the qualified electors in the territory affected and by them approved.

Section 7 of article XVI of the constitution was enacted by the legislature (Ch. 113, L. 1921), and ratified by the people at the election of November 7, 1922, effective under proclamation of the governor December 14, 1922.

This section of the state constitution, authorizing the consolidation of county and city governments, is not an attempted revision under section 8 of article XIX, but is an amendment under section 9 thereof. State ex rel. Corry v. Cooney et al., 70 Mont. 355, 225 Pac. 1007.

Amendment to article XVI of the constitution by adding thereto section 7, providing for the consolidation of county and city governments, is not open to the objection that it violates section 26, article V, of that instrument prohibiting the legislature from passing a local or special act regulating county affairs, creating offices or prescribing the powers and duties of officers in counties and cities, or of section 31 thereof prohibiting the extension of terms of public officers or the increasing or diminishing of their salaries. State ex rel. Corry v. Cooney et al., 70 Mont. 355, 225 Pac. 1007.

The fact that counties, cities and towns may or may not avail themselves of the provisions of this section, its provisions being permissive, is not a proper objection to its validity. State ex rel. Corry v. Cooney et al., 70 Mont. 355, 225 Pac. 1007.

The amendment to the constitution wrought by the addition of this section

of article XVI, is not in contravention of sections 5 and 6, article VI thereof, respecting senatorial districts and representatives in the legislative assembly to which the county sought to be consolidated with a city is entitled, nor of section 13 of article VIII, respecting judicial districts. State ex rel. Corry v. Cooney et al., 70 Mont. 355, 225 Pac. 1007.

This section of the constitution provides that the legislature may "by general or special" law provide for the consolidation of county and city governments. After the passage of a general law on the subject (chapter 121, L. 1923) the legislature passed a special act authorizing the consolidation of the county of Silver Bow and the cities and towns therein located. Held, that the contention that the word "or" limits the power of the legislature to the adoption of either, a general or a special law, and that having adopted the general act it was precluded from passing the special one cannot be sustained, but that in order to carry out the legislative intent the word "or" must be read "and," it being apparent that the legislature in framing section 7 for submission to the electors did not intend to impose a limitation upon its power against adopting both a general and a special law to carry out its provisions. State ex rel. Corry v. Cooney et al., 70 Mont. 355, 225 Pac. 1007.

For text treatment of this subject see vol. 7 Cal. Jur. 390.

ARTICLE XIX.

MISCELLANEOUS SUBJECTS AND FUTURE AMENDMENTS.

Section 4.

Cited in Wall v. Duggan et al., 76 Mont. 239, 245, 245 Pac. 953; McCarthy v. Kelley et al., 63 Mont. 233, 235, 206 Pac. 782.

Sec. 8.

Revision of the constitution authorized by this section, implies the probability of extensive and comprehensive action by a convention, while an "amendment" under section 9 does not only comprehend

any change in the constitution which adds something to or takes away from it, but is susceptible to a construction which will make it cover several propositions, all tending to effect or carry out one general object or purpose, and all connected with one subject. State ex rel. Corry v. Cooney et al., 70 Mont. 355, 225 Pac. 1007.

Cited in Tax Commission Case, 68 Mont. 450, 471, 219 Pac. 817.

For text treatment of this subject see vol. 5 Cal. Jur. 554.

Sec. 9.

Section 2148 initiated by the people, increasing the rate of taxation for state purposes, is not invalid as an attempted submission of an amendment to section 9, article XII of the constitution, without having been first proposed by one of the houses of the legislature as required by this section, since a change in the rate of taxation may be brought about by act of the legislature or by a law initiated by the people without submission of a constitutional amendment in the mode prescribed by this section. *State ex rel. Jones v. Erickson*, 75 Mont. 429, 244 Pac. 287.

Where an amendment to the constitution has but one object in view and relates to but a single plan or purpose, the fact that it may impinge upon or affect various of its provisions does not alone render it objectionable to this section, providing that where more than one amendment is submitted to the people at the same election they shall be separately voted upon. *State ex rel. Corry v. Cooney et al.*, 70 Mont. 355, 225 Pac. 1007.

Section 9, of this article, provides *inter alia* that a proposed amendment thereto shall be entered in full on the

journals of both houses. A bill proposing an amendment to section 15, article XII, creating the state board of equalization, was properly passed by both houses but, while it was entered in full on the journal of the house, it was not so entered in the senate journal. The bill acted upon in both houses was in identically the same language, identifying reference to it having been made in the senate journal, and as passed was published by the secretary of state and ratified by the people. Held, that the course pursued, though not literal compliance with the constitutional provision, was in substantial compliance therewith, the object of the requirement—certainty as to the proposed amendment—having been clearly established by the journals. (*Associate Justices Cooper and Galen dissenting.*) *Tax Commission Case*, 68 Mont. 450, 219 Pac. 817.

For text treatment of this subject see vol. 5 Cal. Jur. 554 et seq.

Construction of requirement that proposed constitutional amendment be entered in journal, notes, 41 A. L. R. 640; 6 A. L. R. 1227.

Repeal of constitutional provision or amendment, note, 36 A. L. R. 1456.

ARTICLE XX.

SCHEDULE.

Section 1.

In ascertaining the meaning of words used in the constitution they will be presumed to have been used in the sense in which they were used generally at the time the constitution was adopted, and interpreted in the light of statutes

then existing and continued in force by this section. *State v. Poland et al.*, 61 Mont. 600, 203 Pac. 352.

For text treatment of this subject see vol. 5 Cal. Jur. 563.

ARTICLE XXI.

STATE PERMANENT REVENUE AND SCHOOL FUNDS.

Section 1. The state of Montana does hereby agree and covenant to accept from any natural person, or persons, from inside or outside the state, gifts, donations, grants and legacies in any amount or value not less than two hundred fifty (\$250) dollars each, for the creation of a state permanent revenue fund, for the creation of a state permanent school fund, for the creation of a permanent revenue fund for the University of Montana, and for the benefit of scientific educational, benevolent and charitable work, subject, however, to all the provisions and limitations of this article.

Sec. 2. The state further agrees and covenants to hold in trust all such contributions (gifts, donations, grants, and legacies), to administer the same perpetually, and to apply the net earnings thereof as therein directed, subject, however, to the provisions and limitations of this act.

Sec. 3. The original amounts of all contributions for the state permanent revenue fund, for the state permanent school fund, and for the permanent

revenue fund for the University of Montana, shall be added to such funds respectively and become inseparable and inviolable parts thereof. Contributions for other objects may contain a provision to the effect that the net earnings thereof, or part of the net earnings, shall be added to the principal for a certain length of time, or until it has reached a certain amount, or until the happening of a certain event, but such contingent event shall not be more remote than permitted by the laws affecting perpetuities; but no contribution containing such provisions as to accumulation shall be accepted by the state until it has been approved by the supervisory board hereinafter constituted, which board shall have power to reject any such contribution that it may deem unwise.

Sec. 4. The state treasurer shall keep a permanent record of all such gifts, donations, grants and legacies, showing the names of the givers, the purpose of the contribution, and other essential facts relating thereto. A duplicate of this record shall be kept by the secretary of state. These records shall be preserved perpetually as a lasting memorial to the givers and their interest in society. The legislative assembly shall from time to time make provision for suitable publicity concerning these benefactors of their fellowmen.

Sec. 5. The same state board and officers that have charge of the investment and administration of the public school fund of the state shall have charge of the investment and administration of all the funds administered under this article. All these funds shall be invested as one common fund to be known and designated as the Montana trust and legacy fund. In case any contribution is in some other form than cash, such board shall convert it into cash as soon as practicable.

Sec. 6. All investments of these funds shall be safely and conservatively made. Preference shall be given to long term loans secured by first mortgages on town and city homes or on cultivated and producing farms in this state free from all prior liens and encumbrances, and also to Montana bonds issued for educational purposes. All such loans and bonds shall be payable on the amortization plan. No loan in which the security is a mortgage shall exceed fifty per cent of the actual cash value of the real estate given as security. No farm loan shall be for a longer period than forty years, and no loan secured on residence property shall be for a longer period than twenty years. No loan secured on town or city property shall be made until the particular town or city and subdivision thereof in which it is located has been accepted and approved by the state board, having charge of the investment, as permanently established, having an assured future and being in every way safe security for these investments. Investment may also be made in other safe interest bearing securities; provided, however, that no part of such funds shall ever be invested in obligations of the state of Montana, except general fund warrants which will be paid within one year from the time of the investment. No discrimination shall ever be shown for or against any loan applicant; provided, however, that in passing on a loan or investment, consideration shall be given, not only to the amplex of the security, but also the character and earning capacity of the applicant and to the purpose of the loan; and provided further that so long as the available funds are inadequate to meet the demand, preference shall be

given to the smaller loans. The rate of interest shall always be a reasonable rate, considering the character of the loan or investment, but different rates may be charged for different classes of loans and investments.

Sec. 7. It is the meaning and intention of this article that all investments of these funds shall be confined exclusively to safe loan investments, drawing a fixed rate of interest and being in aid of home making, farming and educational work, or otherwise conducive to the progress and well being of society. All long term investments shall be on the amortization plan. Further regulations and limitations concerning these investments shall be provided by law.

Sec. 8. Whenever the security given for a loan is liable to damage or destruction by fire, the insurance company accepting the risk shall be absolutely liable to the state for the full amount of the policy, and the policy itself shall specifically recite such full liability. The state may itself provide for insurance on any property constituting security for its loans.

Sec. 9. The legislative assembly may provide other and additional ways and means for beginning or increasing any of the funds created or authorized by this article.

Sec. 10. The state of Montana shall accept for investment and administration together with the aforesaid funds constituting the Montana trust and legacy fund, but as separable parts thereof, sinking funds, permanent funds, and cumulative funds belonging to the state and its political subdivisions, and also other funds designated by the legislative assembly, when requested to do so by the authorities having the care and custody of such funds. All such funds and the accrued interest, less the state compensation hereinafter fixed, shall be repaid when due. The provisions of this section shall not apply to the public school fund of the state, which school fund shall be administered separately as already prescribed by the constitution.

Sec. 11. The state shall be entitled to receive as compensation for the administration of all the funds administered under this act one twentieth (1/20) of all the interest collected thereon each year. On the last day of December of each year, the state treasurer shall transfer to the state general fund such one twentieth (1/20) of all the interest collected during the year, less all the losses ascertained during the year, which losses shall be deducted from the one twentieth constituting the compensation of the state. The balance of the interest collected shall be the net earnings and shall be credited pro rata to each and every fund constituting the Montana trust and legacy fund that was in the keeping of the state on January 1st of that year, based on the total thereof on that date, and shall be added to each fund, or held available for the beneficiaries as the case may be. Sums due beneficiaries shall be paid out during the ensuing month of January, as far as practicable.

Sec. 12. All the net earnings accruing to the state permanent revenue fund shall annually be added thereto until it has reached the sum of one hundred million dollars (\$100,000,000). Thereafter only one twentieth of the annual net earnings shall be added to the fund itself, and the remain-

ing nineteen twentieths of the net earnings shall be used for the general expenses of the state.

Sec. 13. All the net earnings accruing to the state permanent school fund shall annually be added thereto until it has reached the sum of five hundred million dollars (\$500,000,000). Thereafter only one twentieth of the annual net earning shall be added to the fund itself, and the remaining nineteen twentieths shall annually be apportioned to the school districts of the state on the basis of the aggregate actual school attendance in each district during the preceding school or calendar year by persons between the ages of six and eighteen years, and shall be used exclusively for educational purposes, subject to such regulations and limitations as may be prescribed by law.

Sec. 14. All the net earnings accruing to the permanent revenue fund for the university of Montana shall annually be added thereto until it has reached the sum of one hundred million dollars (\$100,000,000). Thereafter only one twentieth of the annual net earnings shall be added to the fund itself, and the remaining nineteen twentieths shall be apportioned to all the educational institutions then comprising the University of Montana, on the basis of the aggregate actual attendance in each institution during the preceding school or calendar year, and may be used for all purposes properly connected with the work of these institutions, subject, however, to such regulations and limitations as may be prescribed by law.

Sec. 15. Whenever the purpose for which a certain contribution was made has been accomplished, or can no longer be ascertained or followed, then the total amount of such fund shall be transferred to the state permanent school fund and become a permanent and inviolable part thereof. All contributions without a specified purpose shall be credited to the state permanent school fund.

Sec. 16. Should the time ever come when any of the three aforesaid permanent funds become so large that no further increase is necessary or desirable, then, in such case, the legislative assembly shall have power to provide for the use of all the net income from such fund for the purpose for which it was created, or it may use the one twentieth of the annual net income which was to be added to the fund itself for the creation of other permanent revenue funds, or for any other public purpose that it may deem wise; provided, however, that none of the foregoing provisions of this section shall apply to any of these funds until it has reached the specific amount fixed by this article.

Sec. 17. The justices of the supreme court of the state of Montana are hereby made and constituted a supervisory board over the entire administration of all the funds created or authorized by this article and the income therefrom. During January of each year, this board shall review the administration for the preceding year. It shall decide all uncertain or disputed points arising in the administration of the funds whenever requested to do so by a beneficiary, by a state official charged with some part of the administration of the fund, or any other interested party; and it may do so upon its own initiative. It shall be the duty of the supervisory board to do and perform all acts and things that it may

deem necessary in order to cause the board and officers having direct charge of these funds to administer the same carefully and wisely in full compliance with the provisions of this article and such further legislation as may be enacted relating thereto. The clerk of the supreme court shall be ex-officio clerk of this supervisory board.

Sec. 18. The legislative assembly shall from time to time enact such further legislation as it may deem necessary to carry into effect the provisions of this article.

Sections 1 to 18, inclusive, of article XXI were enacted by the legislative assembly as chapter 134, L. 1923, approved by the people at the election on November

4, 1924, and became a part of the constitution by proclamation of the governor December 9, 1924.

ORDINANCE No. I.

Section 2.

Cited in *State v. Big Sheep*, 75 Mont. 219, 231, 243 Pac. 1067; *Three Foretops v. Ross*, 73 Mont. 6, 10, 235 Pac. 334.

ORDINANCE No. II.

Section 6.

Cited in *Marcellus v. Wright et al.*, 61 Mont. 274, 287, 202 Pac. 381.

1927 ANNOTATED SUPPLEMENT

TO THE

REVISED CODES

OF

MONTANA OF 1921.

POLITICAL CODE.

ACT TO ESTABLISH A POLITICAL CODE.

3. Laws, when retroactive.

Section 5939 held not to violate either this section or article XV, section 13 of the constitution. *Continental Oil Co. v. Montana C. Co.*, 63 Mont. 223, 207 Pac. 116.

Cited in *Butte & Superior Mining Co. v. McIntyre*, 71 Mont. 254, 262, 229 Pac. 730; *State ex rel. Rankin v. District Court*, 70 Mont. 322, 332, 225 Pac. 804.

Cited in *Educational Bond Case*, 68 Mont. 526, 528, 219 Pac. 637.

For text treatment of this subject see vol. 23 Cal. Jur. 630.

Retroactive effect of statute in relation to presentation of notice of claim for personal injury against a municipality, note, 14 A. L. R. 710.

Retroactive effect of provision for reduction or increase of award, note, 40 A. L. R. 1473.

4. Codes, how construed.

Under this section, a statute in derogation of the common law must be liberally, not strictly, construed. *Anderson et al. v. Wirkman*, 67 Mont. 176, 215 Pac. 224.

Cited in *O'Hanion v. Great Northern Ry. Co.*, 76 Mont. 128, 141, 245 Pac. 518; *In re Connolly's Estate*, 73 Mont. 35, 58, 235 Pac. 408; *Wall v. Brookman*, 72 Mont. 228, 233, 232 Pac. 774; *Swords v. Occident Elevator Co.*, 72 Mont. 189, 193, 232 Pac. 189; *State v. Newman*, 66 Mont. 180, 190, 213 Pac. 805.

Section 8061, Revised Codes, which is

the same as this section, was cited in *Grimstad et al. v. Johnson et al.*, 61 Mont. 18, 22, 25 A. L. R. 351, 201 Pac. 314.

For text treatment of this subject see vol. 23 Cal. Jur. 789.

Strict construction of statutes permitting suit against the state, note, 42 A. L. R. 1475.

Construction of statutes granting exemption from taxation, note, 17 A. L. R. 1029.

8. Actions, etc., not affected by this code.

This and section 17 are emergency measures intended to prevent the abatement of pending proceedings and the loss of existing rights consequent upon the adoption of the codes. They do not in any sense constitute a saving clause

applicable to statutes generally. *Continental Oil Co. v. Montana C. Co.*, 63 Mont. 223, 207 Pac. 116.

For text treatment of this subject see vol. 23 Cal. Jur. 711.

15. Words and phrases, how construed.

Cited as section 3, chapter 4, L. 1921, in *State v. Redmond*, 73 Mont. 376, 380,

237 Pac. 486; *State v. Hennessy Co.*, 71 Mont. 301, 303, 230 Pac. 64; *Northern*

Pacific Ry. Co. v. Sanders County, 66 Mont. 608, 614, 214 Pac. 596.

peal was cited in *In re Fratt's Estate*, 60 Mont. 526, 537, 199 Pac. 711.

This section is identical with section 8070, Revised Codes, which before re-

For text treatment of this subject see vol. 21 Cal. Jur. 878.

17. Effect of codes on prior laws.

This and section 8 are emergency measures intended to prevent the abatement of pending proceedings and the loss of existing rights consequent upon the adoption of the codes. They do not in any sense constitute a saving clause

applicable to statutes generally. *Continental Oil Co. v. Montana C. Co.*, 63 Mont. 223, 207 Pac. 116.

For text treatment of this subject see vol. 23 Cal. Jur. 703.

PART I.

The Sovereignty of the State and the Political Rights and Duties of Persons Subject to Its Jurisdiction.

CHAPTER 3.

GENERAL RIGHTS OF THE STATE OVER PROPERTY.

30. By right of eminent domain.

Cited in *State ex rel. McLeod v. District Court*, 67 Mont. 164, 168, 215 Pac. 240.

For text treatment of this subject see vol. 10 Cal. Jur. 289.

CHAPTER 4.

PERSONS COMPOSING THE PEOPLE OF THE STATE.

33. Residence, rules for determining.

Cited in *State ex rel. Johnson v. Kas-sing*, 74 Mont. 25, 238 Pac. 532.

new home, notes, 16 A. L. R. 1298; 5 A. L. R. 296.

For text treatment of this subject see vol. 9 Cal. Jur. 833.

Change of state or national domicile of incompetent person, note, 36 A. L. R. 607.

Distinction between "residence" and "domicile" for purpose of attachment, note, 26 A. L. R. 187.

Acquisition of domicile in countries granting extraterritorial privileges to foreigners, note, 39 A. L. R. 1155.

Domicile while in itinere from old to

PART III.

The Government of the State.

CHAPTER 3.

THE POWERS, DUTIES AND COMPENSATION OF MEMBERS, OFFICERS AND EMPLOYEES OF THE LEGISLATIVE ASSEMBLY.

73.1. Inventory of legislative property. On the last day of each session of the Montana state legislature, it shall be the duty of the sergeant-at-arms of the senate, the sergeant-at-arms of the house to make a complete inventory of all permanent furniture and fixtures belonging to

the legislative department of the state, together with all office furniture and fixtures and all other fixtures, codes and session laws, tools and office supplies of every description on hand at the close of the session belonging to the legislative department of the state, or which have been purchased and charged to the incidental expense appropriation.

Such inventory shall be made in quadruple, one copy to be filed with the purchasing agent, and one to be filed with the state treasurer, and one copy to be left on file in the sergeant-at-arms office of the state senate, and one in the office of the sergeant-at-arms of the house of representatives.

En. Sec. 1, Ch. 112, L. 1927.

78.2. Custody of property—Appraisal and sale. Upon the completion of the inventory and the adjournment of the legislature, all property listed therein shall be turned over to the custodian of the state capitol of the state, and he shall receipt to the sergeant-at-arms of the senate, and to the sergeant-at-arms of the house of representatives, in detail for the same, and it shall be his duty to carefully care for and preserve all of such property and shall deliver the same to the sergeant-at-arms of the senate, and the sergeant-at-arms of the house of representatives, at the convening of the next session of the Montana legislature; provided, however, that any of said property which might deteriorate in value by being kept shall be appraised by the said purchasing agent, and the said custodian may sell any articles so appraised for not less than such appraised value to any department of the state government, and all moneys received from articles so sold shall forthwith be paid over by said custodian to the state treasurer which shall be credited to the general fund of the state and against the expenses of the legislative department. In the event of the sales of any articles by virtue of this provision, the said custodian shall, in lieu of delivering the same to the respective sergeant-at-arms of the next session of the Montana legislature, deliver to them a list of the articles sold, together with a list of the prices received and receipts of the state treasurer therefor.

En. Sec. 2, Ch. 112, L. 1927.

78.3. Duty of purchasing agent. It shall be the duty of the purchasing agent to assist the custodian in the preservation and safekeeping of the property of the legislative department.

En. Sec. 3, Ch. 112, L. 1927.

78.4. Penalty for removing property. Any person, or persons, who wilfully takes, carries away from the legislative halls, defaces or attempts to take, carry away or deface any of the property listed in the inventory as herein provided or belonging to the legislative department shall be guilty of a misdemeanor and upon conviction thereof shall be fined in a sum of not less than fifty dollars (\$50), nor more than two hundred dollars (\$200).

En. Sec. 4, Ch. 112, L. 1927.

CHAPTER 4.

WITNESSES BEFORE THE LEGISLATIVE ASSEMBLY.

81. Contempt.

Cited as section 97, Revised Codes, in
State v. District Court, 61 Mont. 558,
567, 202 Pac. 756.

For text treatment of this subject see
vol. 5 Cal. Jur. 923.

CHAPTER 5.

STATUTES; THEIR ENACTMENT AND OPERATION.

93. Effect of amendment.

Cited in In re Klunke, 74 Mont. 332,
336, 240 Pac. 286.

For text treatment of this subject see
vol. 23 Cal. Jur. 699.

95. Repeal of statutes.

Cited in Continental Oil Co. v. Mon-
tana C. Co., 63 Mont. 223, 230, 207 Pac.
116.

For text treatment of this subject see
vol. 23 Cal. Jur. 686.

98. Amendatory act, when void.

Cited in In re Naegle, 70 Mont. 129,
136, 224 Pac. 269.

For text treatment of this subject see
vol. 23 Cal. Jur. 685.

CHAPTER 6.

INITIATIVE AND REFERENDUM.

100. Form of petition for initiative.

Under this section petitions for the
initiation of a measure may be filed in
sections for convenience in handling.

State ex rel. Bonner v. Dixon et al., 59
Mont. 58, 195 Pac. 841.

103. Certification and numbering of measures. The secretary of state, at the same time that he furnishes to the county clerk of the several counties certified copies of the names of the candidates for office, shall also furnish the said county clerks his certified copy of the titles and numbers of the various measures to be voted upon at the ensuing general or special election, and he shall use for each measure a title designated for that purpose by the legislative assembly, committee, or organization presenting and filing with him the act, or petition for the initiative or the referendum, or in the petition or act; provided, that such title shall in no case exceed one hundred words, and shall not resemble any such title previously filed for any measure to be submitted at that election which shall be descriptive of said measure, and he shall number such measures. All measures shall be numbered with consecutive numbers beginning with the number immediately following that on the last measure filed in the office of the secretary of state. The affirmative and negative of each measure shall bear the same number, and no two measures shall be numbered alike. It shall be the duty of the several county clerks to print said titles and numbers on the official ballot prescribed by section 678 of the Revised Codes of Montana 1921, in the numerical order in which the measures have been certified to them by the secretary of state. Measures proposed by the

initiative shall be designated and distinguished from measures proposed by the legislative assembly by the heading "Proposed Petition for Initiative."

All constitutional amendments submitted to the qualified electors of the state shall likewise be placed upon the official ballot prescribed by said section 678 and no such amendment shall hereafter be submitted on a separate ballot. Nothing herein contained shall be deemed to change the existing laws of the state regulating in other respects the manner of submitting such proposed amendments.

Amd. Sec. 1, Ch. 52, L. 1927.

In initiating a measure under the power reserved to the people by section 1, article V, of the constitution, a substantial compliance with the legislative direction contained in the provisions of this and the following section is necessary. State ex rel. Bonner v. Dixon et al., 59 Mont. 58, 195 Pac. 841.

The provisions of this section have reference to the title as certified by the secretary of state to the county clerks and not to the title, as presented to him by the proponents of the measure. State ex rel. Bonner v. Dixon et al., 59 Mont. 58, 195 Pac. 841.

For text treatment of this subject see vol. 23 Cal. Jur. 676.

104. Manner of voting—Ballot.

In determining whether the title of an initiated measure as it appears upon the ballot contains more than ten words contrary to the provisions of this section, the words "For Initiative Measure No. ——" and "Against Initiative Measure No. ——" must be excluded from computation. State ex rel. Bonner v. Dixon et al., 59 Mont. 58, 195 Pac. 841.

The title to Initiative Measure No. 19 although containing twelve words was held good under this section in the absence of a showing that the electors were injured or deceived by the technical defect. State ex rel. Bonner v. Dixon et al., 59 Mont. 58, 195 Pac. 841.

105. Printing and distribution of measures. The secretary of state shall furnish a copy of each of the proposed measures to be submitted to the people to, and make requisition on, the state purchasing agent for the printing, and delivery to him of all proposed initiative and referendum measures to be submitted to a vote of the people.

The state purchasing agent, shall, not later than the first Monday of the third month next before any general or special election, at which any proposed law is to be submitted to the people, cause to be printed a true copy of the title and text of each measure to be submitted, with the number and form in which the question will be printed on a separate official ballot. It shall be the duty of the state purchasing agent to call for bids, and contract with the lowest responsible bidder for the printing of the proposed law to be submitted to the people.

The proposed law to be submitted shall be printed in news type, each page to be six inches wide by nine inches long, and when such proposed measure constitutes less than six pages, it shall be printed flat and forwarded to the county clerk and recorder of each of the several counties in that form.

When the proposed measure constitutes more than six pages said measure shall be printed in pamphlet form, securely stapled, without cover. No proposed measure, hereafter, to be submitted to the people of the state, as provided for in this section shall be bound. The quality of the paper to be used for the proposed measure shall be left to discretion of the state purchasing agent. The number of said proposed meas-

ures to be printed shall be five per cent (5%) more than the number of registered voters, as shown by the registration lists of the several counties of the state at the last preceding general election.

The secretary of state shall distribute to each county clerk before the second Monday in the third month next preceding such regular general election, a sufficient number of said pamphlet to furnish one copy to every voter in his county. And each county clerk shall be required to mail to each registered voter in each of the several counties in the state at least one copy of the same within thirty (30) days from the date of his receipt of the same from the secretary of state. The mailing of said pamphlet to electors shall be a part of the official duty of the county clerk of each of the several counties, and his official compensation shall be full compensation for this additional service.

Amd. Sec. 1, Ch. 137, L. 1927.

The question whether sufficient time is allowed by this section for filing arguments in opposition to a proposed initiative measure is one addressed to the legislative department rather than to the judiciary. *State ex rel. Bonner v. Dixon et al.*, 59 Mont. 58, 195 Pac. 841.

Under this section the time for placing with the secretary of state for publication in opposition to an initiative measure runs from the date of the completion of the filing of the petitions for its submission and not from the date of the governor's proclamation. *State ex rel. Bonner v. Dixon et al.*, 59 Mont. 58, 195 Pac. 841.

CHAPTER 7.

THE EXECUTIVE DEPARTMENT, CLASSIFICATION, DESIGNATION, ELECTION AND APPOINTMENT OF EXECUTIVE OFFICERS AND DEPUTIES.

113. State board of equalization.

Rep. Sec. 19, Ch. 3, L. 1923.

123. Consolidated clerkships.

Rep. Sec. 2, Ch. 74, L. 1925.

123.1. Consolidation of clerkships. The clerkship of the state board of examiners and the clerkship of the consolidated boards are hereby consolidated. The clerk of the state board of examiners, in addition to his duties as clerk of said board, shall perform all of the duties of clerk on each of the following boards: the board of pardons, the board of commissioners for the insane, and the board of state prison commissioners.

En. Sec. 1, Ch. 74, L. 1925.

CHAPTER 10.

THE SECRETARY OF STATE.

145. Fees of secretary of state.

This section, imposing upon the secretary of state the duty to collect a fee for filing a certificate of increase of the capital stock of a foreign corporation doing an intrastate business, only a small portion of which stock is represented by property owned and business transacted within the state, which fee is computed upon its entire capital stock as increased, was held invalid before amendment as

violative of the due process of law clause of the federal constitution. *General Electric Co. v. Stewart*, 60 Mont. 387, 199 Pac. 911.

This section, requiring the secretary of state to collect a graduated fee for the filing of certificates of incorporation and increase of capital stock, based upon the entire capital stock, was held invalid before amendment as to a foreign cor-

poration engaged both in interstate and intrastate business and only a portion of whose capital stock is represented by property owned and business done by it in this state, as in contravention of the commerce and due process of law clauses of the federal constitution. J. I. Case T. M. Co. v. Stewart, 60 Mont. 380, 199 Pac. 909.

145.1. Fees for filing articles of foreign corporations. That every foreign corporation required by law to file in the office of the secretary of state a certified copy of its charter or articles of incorporation shall pay to the secretary of state for the filing thereof as follows:

Upon the proportion of its authorized capital stock then or thereafter to be represented by its property and business in Montana at the rate of one dollar (\$1.00) per thousand dollars for the first one hundred thousand dollars; at the rate of eighty (80) cents per thousand dollars for any additional from one hundred thousand to two hundred fifty thousand dollars; at the rate of sixty (60) cents per thousand dollars for any additional from two hundred fifty thousand dollars to five hundred thousand dollars; at the rate of forty (40) cents per thousand dollars for any additional from five hundred thousand to one million dollars; and at the rate of twenty (20) cents per thousand dollars for any additional over one million dollars, provided, however, that no fee for filing shall be less than \$50.

En. Sec. 1, Ch. 95, L. 1925.

145.2. Report concerning capital stock. Every foreign corporation which is required by law to file in the office of the secretary of state a certified copy of its charter or articles of incorporation shall annually and between the first days of January and March of each year file in said office a report verified by the oath of its president, vice-president, or secretary, stating the proportion of its authorized capital stock represented in the state of Montana by its property located and business transacted therein during the preceding year.

En. Sec. 2, Ch. 95, L. 1925.

145.3. Computation of authorized capital stock employed in state. In determining the proportion of authorized capital stock employed in this state the same shall be computed by taking the gross business in dollars of the corporation in the state for the preceding year and adding the same to the full value in dollars of the property of the corporation located in the state and by taking the total gross business in dollars of the corporation, both within and without the state for the preceding year, and adding thereto the full value in dollars of the entire property of the corporation both within and without the state and by then dividing the total value in dollars of the business and property in the state by the total value in dollars of all the business and property of the corporation, the quotient thus obtained to be taken as the percentage of the authorized capital stock represented by the business and property within the state. The secretary of state may demand as a condition to the filing of such report a statement verified by the president, vice-president or secretary of such foreign corporation, showing in detail the informa-

tion required for the making of the calculation aforesaid, which statement when so demanded shall be attached to and filed with such report.

En. Sec. 3, Ch. 95, L. 1925.

145.4. Additional fee. Whenever such report shall show a greater proportion of the authorized capital stock of such foreign corporation represented by its property and business in Montana than that upon which the fee for filing was based, such foreign corporation at the time of filing such report, shall pay such additional fee as it would have been required to pay for filing if such fee had been calculated on the basis of the proportion of the authorized capital stock represented by its business and property in Montana as shown by such report.

En. Sec. 4, Ch. 95, L. 1925.

145.5. Stock of no par value, how estimated. If a foreign corporation has capital stock of no par value, its shares, for the purpose of estimating the amount of fees to be paid hereunder, shall be considered to be of the par value of \$50 per share.

En. Sec. 5, Ch. 95, L. 1925.

145.6. Penalty. If any foreign corporation shall fail to file such annual report, or to pay such additional fee or shall file a false report, it shall forfeit its right to do business in this state.

En. Sec. 6, Ch. 95, L. 1925.

145.7. Application act. The provisions of this act shall apply to all corporations which have entered Montana for the transaction of business subsequent to February 27, 1915.

En. Sec. 7, Ch. 95, L. 1925.

CHAPTER 11.

THE STATE AUDITOR AND COMMISSIONER OF INSURANCE.

151. General duties.

Notice of assignments of claims against the state must be filed with the state auditor and not with the clerk of the state board of examiners. *Porter v. Hartley et al.*, 67 Mont. 244, 216 Pac. 344.

Cited in *Porter v. Hartley et al.*, 67 Mont. 244, 251, 216 Pac. 344.

Cited as section 170, Revised Codes, in *State v. State Board of Examiners*, 59 Mont. 557, 567, 197 Pac. 988.

162. Auditor as commissioner of insurance—Appointment of deputy. The state auditor in addition to his present title shall be hereafter designated as commissioner of insurance. He shall appoint a deputy to be designated as deputy commissioner of insurance, who shall be in charge of the department of insurance in the said auditor's office under the direction and control of said state auditor and commissioner of insurance. The insurance commissioner shall have and exercise the power to enforce all the laws of the state relating to insurance, and it shall be his duty to enforce all the provisions of such laws for the public good. Provided that

nothing herein contained shall be construed to authorize an increase of employees in said office.

As insurance commissioner, ex officio, the state auditor shall receive, in addition to the salary provided by law for the discharge of the duties of state auditor, the additional sum of six hundred dollars per year, payable in equal monthly installments with the salary of state auditor.

Amd. Sec. 1, Ch. 99, L. 1923; Amd. Sec. 1, Ch. 153, L. 1927.

CHAPTER 12.

THE STATE TREASURER.

180. Registry and interest on state warrants. It is the duty of the state treasurer on the presentation of state warrants, regularly issued, to pay the same out of any funds available for such payments, and in the event there are no funds available for such payment, he must register each warrant in a book or register to be kept for the purpose, entering the date of issue, date of registration, name in whose favor warrant is drawn, the number and amount thereof, and he shall indorse on each warrant so registered, on its face, "Presented for payment and not paid for want of funds and registered in this office this day of,," inserting the date of registration, and he shall affix his signature as such treasurer thereto; and all warrants so registered and indorsed on and after March first, 1927, shall bear interest at the rate of four per cent per annum until called for payment, after date of which call interest shall cease; and all warrants shall be redeemed and paid in the order of their registration and in the manner set forth in section 183 of this code.

Amd. Sec. 1, Ch. 159, L. 1923; Amd. Sec. 1, Ch. 111, L. 1925; Amd. Sec. 1, Ch. 2, L. 1927.

State ex rel. Toomey v. Board of Examiners, 74 Mont. 1, 19, 238 Pac. 316.

Cited as section 181, Revised Codes, in State v. State Board of Examiners, 59 Mont. 557, 567, 197 Pac. 988.

182. Depositories of state funds — Securities — Interest — Reserve. The state depository board shall designate as depositories as many banks within the state as in its judgment are necessary for the safekeeping of the public moneys in the hands of the state treasurer, as hereinafter directed; provided, that all banks so designated shall undertake and agree, as a condition precedent to the deposit of any funds in such bank, that interest shall be paid upon the daily balances of all such deposits at a rate prescribed by the said board, which shall not be less than two and one-half per cent per annum, and all deposits shall be adequately and properly secured to the treasurer as herein specified. No deposits shall be made of state funds by such depository board, nor by the state treasurer under the direction of said board, unless such bank shall first have delivered to the state treasurer as security thereof bonds of the United States, or of the state of Montana, or county, school or municipal bonds, or registered warrants of the state of Montana or of counties of the state of Montana, in at least an amount equivalent to the amount of such deposit, or the bond of some good surety company authorized to do business in the state of Montana in at least the amount of such deposit,

which bonds, warrants, or security shall first be approved by the state depository board; provided, that the state depository board may require security in a greater amount than that above named. No deposit of said funds shall be made or permitted to remain in any bank unless such bank shall have first been designated as a depository by said state board, nor until the security for the deposit shall have first been deposited with the treasurer and been approved by the state depository board. In designating the depositories for state funds, the state depository board shall, as near as may be found practicable, make designation of depositories in the respective counties of the state, and cause to be deposited in them public funds proportionate to the amount of public revenue received from such counties by the state. All interest paid and collected on deposits shall be by the state treasurer credited to the general fund of the state. The state depository board shall have the power of directing the withdrawal by the state treasurer of all moneys from any bank for any reason. When moneys shall have been deposited, under the direction of said depository board, and in accordance with the law, the treasurer shall not be liable for loss on account of any such deposit occurring through damage by the elements, or for any other cause or reason occasioned through means other than his own neglect, fraud, or dishonorable conduct. It shall be the duty of the state treasurer to deposit funds in such bank, and in such amounts, as may be designated by the state depository board, and to withdraw such deposits when instructed so to do by the said board; provided, that the state treasurer shall at all times keep a cash reserve in state depositories provided for by this act, of at least fifteen per cent of all state funds, and no permanent investment shall be permitted which will in any manner impair said reserve. But such treasurer shall have the authority, either with or without the direction of said state board, to withdraw all of such deposits, or any part thereof, from time to time, to pay and discharge the legal obligations of the state duly presented to him in accordance with the law, except as above. Nothing herein shall be construed as limiting or impairing the right of the state board of land commissioners to invest public moneys in bonds or other securities as otherwise provided by law.

Amd. Sec. 1, Ch. 85, L. 1923.

This section, the state depository law, and sections 6071 and 6083, the former requiring state banks to make report of their condition to the superintendent of banks and the latter conferring upon him visitorial powers with the right to

examine their books, do not expressly or by implication waive the state's preference right over unsecured creditors of an insolvent bank to payment of its deposits. *State ex rel. Rankin v. Madison State Bank*, 68 Mont. 342, 218 Pac. 652.

183. Posting list of warrants.

Cited in *State ex rel. Toomey v. State Board of Examiners*, 74 Mont. 1, 19, 238 Pac. 316.

187. Quarterly report to governor.

Rep. Sec. 4, Ch. 6, L. 1925.

187.1. Treasurer to keep account of funds—Publication of quarterly report. The state treasurer must keep a separate account of each fund in his hands and must at the end of each quarter of the fiscal year report

to the governor in writing, under oath, the amount of all moneys in his hands to the credit of each such fund, and the place or places where the same is kept or deposited, and the number and amount of every warrant paid or redeemed by him during the quarter. The separate accounts shall not be published in detail, but the treasurer shall prepare a balance sheet showing a summary of the separate accounts, which balance sheet shall be transmitted to the governor for verification and publication. The governor must verify the report and cause the same, as summarized, to be immediately published once as news matter in the newspaper printed and circulated at the seat of government of the state of Montana, which is the lowest bidder for such printing, as required by law. In publishing the amount of every warrant paid as herein provided, it shall not be considered to also require the publication of the original amount of the warrant and in addition the amount of interest thereon, but such publication shall only be the number and original amount of such warrant.

En. Sec. 1, Ch. 6, L. 1925.

187.2. Advertisement for bids. Immediately upon the taking effect of this act, and for such length of time thereafter as the constitution of the state of Montana shall continue to require the publication of the reports hereinafter referred to, it shall be the duty of the state purchasing agent to advertise for bids for the publication of such quarterly reports. Such advertisement for bids shall be made at least once a year.

En. Sec. 2, Ch. 6, L. 1925.

187.3. Approval and letting of contract. The contract for the publication of said report shall be let by the state purchasing agent, subject to the approval of the state board of examiners, to the lowest responsible bidder and shall be for a period of not longer than one year, and it shall not be let for a price totaling an excess of two thousand dollars \$2,000 for a period of one year.

En. Sec. 3, Ch. 6, L. 1925.

198.1. Designation of controlling fund accounts. The state treasurer and state auditor are hereby directed to open and maintain upon their respective books of accounts, the following controlling fund accounts for the recording and reporting of all moneys coming into the custody of the state: General fund; bounty fund; fish and game fund; livestock commission fund; livestock sanitary board fund; educational bond interest and sinking fund; veterans' welfare bond interest and sinking fund; hail insurance fund; escheated estates fund; soldiers and sailors home fund; law enforcement fund; state trust and agency funds; federal trust and agency funds; federal land grant permanent funds; federal land grant income fund; interest bearing investment funds.

En. Sec. 1, Ch. 110, L. 1923.

198.2. What shall be recorded therein. In the accounts above designated as general fund; bounty fund, fish and game fund; livestock commission fund, livestock sanitary board fund; educational bond interest and sinking fund, veterans welfare bond interest and sinking fund, hail insurance fund, escheated estates fund, soldiers and sailors home fund and

law enforcement fund, shall be recorded all transactions in anywise affecting the receipt for disbursement of moneys now accounted for under the above titles by virtue of existing statutes without change from the present system.

En. Sec. 2, Ch. 110, L. 1923.

198.3. State trust and agency fund account. The fund account above designated as the state trust and agency funds account shall be a general controlling account, recording all financial operations in anywise affecting the funds now carried in the books of the state treasurer and the state auditor, known as the anti-hog cholera serum fund; architectural board fund; attorneys license fund; biological survey fund; Carey land act board fund; Carey land filing fund; certified public accountants fund; chiropractic examining board fund; county portion inheritance tax fund; depository interest fund; Dixon endowment fund; educational bond fund series "A"; educational bond fund series "B"; educational bond fund series "C"; embalmers license fund; fire marshal's fund; gasoline license tax fund; hail insurance administration fund; highway commission fund; industrial accident board fund; irrigation commission fund; law library fund; livestock emergency fund; medical board fund; motor vehicle administration fund; protested license tax fund; real estate license fund; stock estray fund; teachers certificate fund; teachers permanent fund; teachers retirement fund; veterans welfare commission fund:

En. Sec. 3, Ch. 110, L. 1923.

198.4. Federal trust and agency fund. The fund account above designated as the federal trust and agency funds shall be a general controlling account recording all financial operations in anywise affecting the funds now carried in the books of the state treasurer and the state auditor, known as the agricultural college Adams fund; agricultural college flax fund; agricultural college hatch fund; agricultural college Morrill-Nelson fund; agricultural college Smith-Lever fund; board of health disease control fund; board of health maternity hygiene fund; forest reserve fund; highway trust fund; oil royalties fund; soldiers home maintenance fund; vocational education fund; vocational rehabilitation fund.

En. Sec. 4, Ch. 110, L. 1923.

198.5. Federal land grant permanent fund account. The fund account above designated as the federal land grant permanent funds account, shall be a general controlling account recording all financial operations in anywise affecting the funds now carried in the books of the state treasurer and the state auditor, known as the agricultural college Morrill act fund; agricultural college permanent fund; common school permanent fund; deaf and blind school permanent fund; Normal school permanent fund; reform school permanent fund; school of mines permanent fund; soldiers home permanent fund; university permanent fund.

En. Sec. 5, Ch. 110, L. 1923.

198.6. Federal land grant income fund. The fund account above designated as the federal land grant income fund shall be a general con-

trolling account recording all financial operations in anywise affecting the funds now carried in the books of the state treasurer and the state auditor known as the agricultural college interest and income fund; capitol building interest and sinking fund; common school interest and income fund; deaf and blind school interest and income fund; normal school interest and income fund; reform school interest and income fund; school of mines interest and income fund; university interest and income fund.

En. Sec. 6, Ch. 110, L. 1923.

198.7. Interest bearing invested funds account. The fund account above designated as the interest bearing invested funds account shall be a general controlling account recording all financial operations in anywise affecting the funds now carried in the books of the state treasurer and the state auditor known as the agricultural college permanent fund; agricultural college Morrill fund; common school permanent fund; common school income fund; deaf and dumb school permanent fund; normal school permanent fund; reform school permanent fund; school of mines permanent fund; soldiers home permanent fund; teachers permanent fund; university permanent fund.

En. Sec. 7, Ch. 110, L. 1923.

198.8. Allocation of new funds. Any new funds hereafter to be created or accepted are hereby placed under their respective general headings, as above designated.

En. Sec. 8, Ch. 110, L. 1923.

198.9. Designation fiscal agency for payment of bonds. The governor of the state of Montana is hereby authorized to designate one or more banks or trust companies in each city in the United States where the bonds or interest coupons of any bonds issued by the state of Montana or any county, city, town, school district, irrigation district or drainage district of Montana, are made payable, as the fiscal agency for the state of Montana for the payment of such bonds and coupons.

En. Sec. 1, Ch. 92, L. 1925.

198.10. Bond required. Before establishing and designating such fiscal agency, the governor shall, if he deem it necessary, require a bond to be given by such bank or trust company to the state of Montana, in such amount as the governor may prescribe, approve and deem sufficient to insure the safety and prompt payment of all funds deposited with such fiscal agent. Such bond shall be approved by the governor and filed in his office.

En. Sec. 2, Ch. 92, L. 1925.

198.11. Remittance of redemption money. From and after the passage of this act, the treasurer of the state of Montana or the treasurer of any county, city, town, school district, irrigation district, or drainage district of Montana may be required to remit to the state fiscal agency, at least fifteen (15) days or such other period as may be agreed upon, before the

maturity of any bonds or coupons payable as provided in section 1 hereof, a sufficient sum of money to cover the redemption of such bonds or coupons.

En. Sec. 3, Ch. 92, L. 1925.

198.12. Cancellation of bonds or coupons. On the receipt of any funds by such fiscal agent, it shall be the duty of such fiscal agent to notify the officers from whom received of the receipt thereof, and immediately upon the payment of the bonds or coupons for which such funds were remitted, said bonds or coupons shall be canceled and shall be returned to the treasurer of the state, county, city, town, school district, irrigation district, or drainage district entitled to the same.

En. Sec. 4, Ch. 92, L. 1925.

198.13. Notice of place of payment. It shall be the duty of the treasurer of the state of Montana, or any county, city, town, school district, irrigation district, or drainage district of Montana, which has issued bonds, to advise the state auditor forthwith, giving the name and location of all banks or trust companies at which said bonds or interest coupons are made payable, whereupon the state auditor shall so advise the governor in order that the necessary fiscal agency may be designated.

It shall be the duty of the state auditor, immediately after the establishment of any fiscal agency provided for in this act, to publish a notice in some newspaper of general circulation in any city where such bonds are made payable, for two weeks, and thereafter all bonds and coupons of the state of Montana, or any county, city, town, school district, irrigation district or drainage district of Montana, which are by their terms payable at a certain bank in said city, shall be paid at said fiscal agency.

En. Sec. 5, Ch. 92, L. 1925.

198.14. Responsibility for funds. No state, county, city, town, school district, irrigation district or drainage district treasurer shall be held responsible for funds remitted to any fiscal agency in pursuance of the provisions of this act, after the acknowledgment of the receipt of the same by the fiscal agent.

En. Sec. 6, Ch. 92, L. 1925.

198.15. Liability for failure to comply with act. In case any state, county, city, town, school district, irrigation district, or drainage district treasurer shall wilfully neglect or refuse to perform the duties imposed by this act, he shall be liable to the holder of any bonds or coupons aggrieved thereby, in a sum double the amount of such bonds or coupons as shall be dishonored by the neglect or refusal of such officer to comply with the provisions of this act, provided the state or the municipality shall have funds on hand to pay such obligation herein mentioned which may be recovered in a suit at law against such treasurer.

En. Sec. 7, Ch. 92, L. 1925.

198.16. Change of agency. The governor of the state may at any time change any fiscal agency in case the agency theretofore designated

shall neglect or refuse to act, and in case of a change being made, it shall be the duty of the state auditor to notify the state treasurer and all county, city, town, school district, irrigation district, and drainage district treasurers within the state of Montana, of such change, and shall publish the same as provided in section 5 of this act.

En. Sec. 8, Ch. 92, L. 1925.

CHAPTER 13.

THE ATTORNEY GENERAL.

199.1. Attorney general to prescribe forms. It shall, from and after the passage and approval of this act, be the duty of the attorney general of the state of Montana to prescribe the form of blanks to be used by the clerks of the district courts in issuing commitments to the several state institutions, admission to which requires a court commitment.

En. Sec. 1, Ch. 158, L. 1925.

206.1. Transfer law enforcement fund. There is hereby transferred to the department of the attorney general all the balance remaining in the state law enforcement fund resulting from the enforcement of the state laws relating to the sale, possession and manufacture of intoxicating liquors, and the state treasurer is hereby directed to transfer such fund on his books.

En. Sec. 1, Ch. 127, L. 1927.

206.2. Fund, how used. This fund shall be known as the law enforcement fund of the attorney general's department, and shall be expended by him for the purpose of enforcement of the laws of the state and for no other purpose.

En. Sec. 2, Ch. 127, L. 1927.

CHAPTER 14.

THE STATE LAND AGENT.

207. Reference to sections relative to state land agent.

Rep. Sec. 123, Ch. 60, L. 1927.

CHAPTER 16.

THE STATE EXAMINER.

210. Duties of state examiner. The duties of the state examiner and his assistants are:

1. To examine at least once in each year the books and accounts of the state treasurer, state auditor, secretary of state, clerk of the supreme court, state game warden, register of state land office, and all other state officers having the collection or handling of state money, county treasurers, county clerks, county assessors, district court clerks, county auditors, sheriffs, public administrators, boards of county commissioners of each county, and all other officers and boards whether temporary or permanent, however created and for whatever purpose, having the control,

management, collection or disbursement of any public moneys of any character or description.

2. To prescribe the general methods and details of accounting for the receipt and disbursement of all moneys belonging to the counties, cities, towns, or school districts, and the educational, charitable, penal, and reformatory institutions of the state of Montana, and to establish in all such offices such general methods and details of accounting as are required by law or are prescribed by the state examiner, and all county, city, town or school district officers, and officers of educational, charitable, penal and reformatory institutions of the state of Montana are hereby compelled to conform therewith.

3. To examine at least once each year the books and accounts of the treasurer and secretary of each and all of the educational, charitable, penal and reformatory institutions of the state of Montana, and to examine into the financial affairs and conditions of each and all of said institutions.

4. To visit each and every office of the officers, boards and institutions named in this act at least once in each year; and at such time to examine the books, accounts and vouchers in said office, to verify statements of receipts and expenditures, and indebtedness, and to examine and pass upon the character and amounts of any commissions, percentage, or charges for services, exacted by any officer, and of all claims allowed by any of said officers, boards or institutions.

5. To visit twice each year, or oftener, without previous notice, each of the banks, banking corporations and savings banks, building and loan associations, investment and loan companies incorporated under the laws of this state, or doing business under any law of the state concerning corporations, and to examine into their affairs and ascertain their financial condition; to inspect and verify the value and the amount of their securities and assets, and to inquire into any violation of laws governing such banks, institutions, building and loan associations.

6. The state examiner, after examination of the affairs of any state officer, board, or institution, or board of county commissioners, must make report to the governor and to the attorney general of the result of such examination, within sixty days thereafter; and if any violation of law or nonperformance of duty is found on the part of any such officer or board, they must be proceeded against by the attorney general or county attorney as provided by law.

7. The state examiner, or his assistants, after the examination of the affairs of any county officers, must make report of such examination to the board of county commissioners and to the county attorney of such county, within thirty days after such examination; and if any violations of law or nonperformance of duty is found on the part of any county officer or board, such officer or board must be proceeded against by the county attorney of the county as provided by law.

8. The state examiner must make an annual report to the governor immediately after the end of each fiscal year, but such report must not be printed unless the printing thereof be ordered by the state board of examiners.

9. It shall be the duty of the county attorneys of the various counties of the state of Montana and the city attorneys of the various cities and towns of the state of Montana to make report to the state examiner within thirty days after receiving from the state examiner the report of any examination of any county, city or town as to what proceedings he has instituted or is intending to institute relating to violations of law and nonperformance of duty, as set forth in the report of the state examiner.

10. If any county or city attorney refuses or neglects to notify the state examiner within thirty days after receiving the report of any examination of any county, city or town, as to what proceedings he has instituted or is about to institute against any officer for violations of law or nonperformance of his duty, as evidenced by matters of record, and as set forth in the state examiners report; the state examiner may withhold the salary of such county or city attorney by filing notice with the proper officials, until proper and satisfactory explanation has been made to the state examiner for such nonperformance of duty, "provided further, that should the county or city attorney fail or refuse to prosecute such cases, the state examiner may employ an attorney to prosecute such case at the expense of the county, city, or town."

Amd. Sec. 1, Ch. 78, L. 1923.

210.1. Examiner's report to be entered in minutes. Upon the receipt of the state examiner's report covering the examination of the affairs of any county, it shall be the duty of the board of county commissioners of such county, to have such report entered and made a part of the minutes of the next regular meeting of such board; provided such report shall not be published by the board of county commissioners as a part of the minutes of its proceedings. Provided, further, that the state examiner shall, at the time such report of examination is forwarded to the county commissioners, send a like copy to the official newspaper of the county for publication. Such publication shall be had once in the official newspaper forthwith, and shall be a charge against the county at the same rate as provided for in the contract for county printing for proceedings of the county commissioners.

En. Sec. 1, Ch. 30, L. 1923; Amd. Sec. 1, Ch. 85, L. 1925; Amd. Sec. 1, Ch. 81, L. 1927.

230.1. Validation of certain poor fund warrants. That all warrants heretofore drawn on the poor funds of any first or second class county in the state of Montana for services actually rendered, or for goods or materials actually furnished, which warrants were drawn and registered since the passage and approval of chapter 209 of the Session Laws of 1921, enacted by the seventeenth legislative assembly of the state of Montana, and without compliance with said chapter, are hereby declared valid and subsisting claims against said county poor funds; and the payment of all such warrants in the order of their registration is hereby authorized.

En. Sec. 1, Ch. 29, L. 1925.

CHAPTER 18.

THE BOARD OF EXAMINERS—STATE PRINTING AND SUPPLIES—CONTRACTS FOR BUILDINGS AND IMPROVEMENTS.

232. Board, how composed.

Cited as section 226, Revised Codes, in *State v. State Board of Examiners*, 59 Mont. 557, 558, 197 Pac. 988.

233. Meetings and Officers.

Sections 233, 234 were cited in *State* 1096; *Porter v. Hartley et al.*, 67 Mont. v. Rouleau, 68 Mont. 529, 540, 219 Pac. 244, 251, 216 Pac. 344.

238. Claims for which appropriations have been made.

After the state board of examiners has examined, adjusted and approved a claim against the state its functions are ended and it is without power to determine the legal question of title to the warrant issued thereupon in a dispute between conflicting claimants thereto. *Porter v. Hartley et al.*, 67 Mont. 244, 216 Pac. 344.

239. Approval and warrant.

Cited in *Porter v. Hartley et al.*, 67 Mont. 244, 252, 216 Pac. 344.

244. Proof and examination of such claims.

Cited in *Porter v. Hartley et al.*, 67 Mont. 244, 252, 216 Pac. 344.

250. Board may prevent payment of auditor's warrants.

Cited in *State ex rel. Jones v. Erickson*, 75 Mont. 429, 457, 244 Pac. 287.

259.1. Contracts—Requirements—Advertising. It shall be unlawful for the board of examiners or any offices, departments, institutions, or any agent of the state of Montana acting for or in behalf of said state to let any contract for the construction of buildings or the alteration, repair and improvement of buildings and grounds on behalf of and for the benefit of the state where the amount involved is five hundred dollars (\$500) or more without first advertising in at least one (1) issue each week for three (3) consecutive weeks in two (2) newspapers published in the state, one (1) of which must be published at the seat of government, and the other in the county where the work is to be performed calling for sealed bids to perform such work and stating the time and place, when and where such bids will be considered.

En. Sec. 1, Ch. 149, L. 1927.

259.2. Contents of advertisements. The board must specify in the advertisement the amount, kind, and general character of the buildings or grounds to be improved, altered, repaired, or constructed and must refer to the place where the plans, specifications and details may be found, and the same must be available to any prospective bidder.

En. Sec. 2, Ch. 149, L. 1927.

259.3. Bids. There must be bids from at least two (2) responsible contractors in their respective lines when said contract involves an

expenditure of more than two thousand dollars (\$2,000); each bid must be accompanied by a certified check for five per cent of the amount of his bid.

En. Sec. 3, Ch. 149, L. 1927.

259.4. Awarding contracts. The bids received must be given to the board, opened and compared at its office at ten o'clock A. M. of the day specified in the advertisement, and the board must award the contract for the construction of the buildings or the alteration, repair, or improvement of any buildings and grounds to the lowest responsible bidder at such time. Provided, however, said board has power to reject any and all bids.

En. Sec. 4, Ch. 149, L. 1927.

259.5. Cost plus. Any contracts hereafter made by, on behalf of or for the state of Montana after the passage of this act which shall directly or indirectly recognize the cost plus system or principle shall be void and of no effect, and this act shall stand as a notice of the invalidity of any such contract.

En. Sec. 5, Ch. 149, L. 1927.

259.6. Proviso. Nothing herewith contained shall in any way be construed as altering, modifying or changing the laws providing for or relating to the state purchasing department, or the purchasing agent of the state.

En. Sec. 6, Ch. 149, L. 1927.

268. Board may employ clerical help for state officers.

Cited in *State v. Rouleau et al.*, 68 Mont. 529, 540, 219 Pac. 1096.

269. Contracts in excess of appropriation prohibited.

Under this section the state board of appropriation. *State ex rel. Jones v. Erickson*, 75 Mont. 429, 244 Pac. 287.
examiners has no power to arbitrarily reduce the amount of a legislative ap-

270. Investment of special funds in general fund warrants. The state board of examiners is hereby empowered to invest any moneys available in the following funds: Escheated estate fund, educational bond interest and sinking fund, and the fish and game fund, in the hands of the state treasurer, in state general fund warrants.

Provided, however, that no moneys shall be taken from the fish and game fund except with the consent of the Montana fish and game commission.

Amd. Sec. 1, Ch. 122, L. 1925.

CHAPTER 19.

THE STATE PURCHASING DEPARTMENT.

285. Duties of state purchasing agent—Contingent funds for state departments.

Cited in *Northern Pacific Ry. Co. v. Sanders County*, 66 Mont. 608, 614, 214 Pac. 596.

287. Authority to purchase. An estimate or requisition approved by the department, commission, board or state official in control of the appropriation or fund against which such contract or purchase is to be charged, shall be full authority for any contract and any purchase made by the state purchasing department; provided, however, that no purchase shall be made by the state purchasing department of any furniture, fixtures, apparatus or equipment for any department, board, commission or office until the estimate or requisition for the purchase thereof has been submitted to the state board of examiners and an order made by such board authorizing the purchase thereof.

Amd. Sec. 1, Ch. 17, L. 1925.

293.1. Property returns by state officials. All persons in charge of any state property, must, upon request of the state purchasing agent, furnish him with a sworn statement of all personal property in his possession or under his charge belonging to the state of Montana, together with an estimate of the value thereof, and must also furnish such other information in connection therewith, as the state purchasing agent shall require.

En. Sec. 1, Ch. 66, L. 1923.

293.2. Inventory—Contents and preparation. From the report so made to the state purchasing agent, he must on or before June 30, 1923, prepare a complete inventory for each state department, office, board, commission or institution, of all personal property belonging to the state of Montana, in charge or possession of such department, office, board, commission and institution, each such inventory to show in detail the estimated value of the items embraced therein, and each state department, office, board, commission and institution must be charged with all items of personal property and all other personal property thereafter placed at the disposal of any such state department, office, board, commission and institution, and shall be credited with all worn out, used, lost, injured or destroyed property from time to time, as may be reported to the state purchasing agent, and shall be held responsible for all items of personal property not accounted for.

En. Sec. 2, Ch. 66, L. 1923.

293.3. Bids for supplies. The state purchasing agent in making purchase of supplies and equipment under the provisions of this act, or under the laws of the state of Montana must advertise as hereinafter provided, and award contracts in the name of the state of Montana for such supplies and equipment to the lowest responsible bidder, except as hereinafter provided.

En. Sec. 3, Ch. 66, L. 1923.

293.4. Power to sell state property—Disposal of money. The state purchasing agent shall have exclusive power, subject to the consent and approval of the governor, to sell, or otherwise dispose of, or to authorize the sale or other disposition of, all materials and supplies, service, equipment, or other personal property of every kind now owned by the state

of Montana, but not needed or used by any state institution or by any department of the state government; and to sell all articles, produce or crops produced, manufactured, made or grown in any state institution and to collect the money for same except such portion of such articles, produce or crops as may be used or consumed in such institution; each state institution shall keep and submit to the state purchasing agent, at least once each year or oftener if demanded, a list of such articles, produce or crops used or consumed therein and if any part thereof has theretofore been inventoried, as in this act hereinbefore provided, then such institution shall be given credit therefor. The state purchasing agent shall remit to the state treasurer all moneys received from the sale of property belonging to the state of Montana, said moneys to be by the treasurer credited to the general fund. True and correct lists of all articles, produce and crops sold with the names of the purchasers, their addresses and sums received therefor, shall be prepared and kept on file in the office of the state purchasing agent, which list shall at all times be subject to inspection by the public.

En. Sec. 4, Ch. 66, L. 1923.

293.5. Legislative and other departmental supplies how purchased.

Unless otherwise provided by law, the state purchasing agent shall have exclusive power, subject to the consent and approval of the governor, to let to the lowest bidders and enter into contracts with the lowest bidders, for the furnishing of all supplies, stationery, paper, fuel, water, lights, and other articles required by the legislative assembly and all other offices, departments, boards, commissions and institutions of the state.

Before any such contract is let, the state purchasing agent must advertise in such manner and for such time as in this act provided for sealed proposals for all such supplies or services mentioned in this section.

En. Sec. 5, Ch. 66, L. 1923.

293.6. Purchase of state printing and reports.

The state purchasing agent shall have exclusive power, subject to the consent and approval of the governor, to contract for all printing for any purpose used by the state of Montana in any state office, elective or appointive or by any state board, commission, bureau, state institution or department and shall supervise and attend to all public printing of the state of Montana in the manner in this act provided, and shall prevent duplication and unnecessary printing; all forms, blanks and documents printed for distribution to the departments of the state government or state institutions shall be serially numbered and indexed by the state purchasing agent and sample copies of each thereof permanently retained in his office; and the state purchasing agent shall from time to time furnish to the public general information as to the nature, description and official numbers of such reports as are available for public distribution.

Unless otherwise provided by law, the state purchasing agent in letting contracts as provided in this act, for the printing, binding and publishing of all laws, journals and reports of the various offices, departments, boards, commissions and institutions of the state, shall have the

power to determine the quantity, quality, style and grade of all such printing, binding and publishing. Provided, that all reports for any fiscal year required by law to be published, must be submitted to the governor before November 1st, of each year, for approval, correction or modification, and when by the governor approved, as corrected or modified, must by him be certified to the state purchasing agent for publication, provided, the governor may require all such reports or any number of them, to be published in one volume, such publication to be completed on or before the tenth day of January thereafter.

And provided further, any such reports so published, in one volume may also be separately published in pamphlet form, in such number as may be directed by the governor.

En. Sec. 6, Ch. 66, L. 1923.

293.7. State officers to estimate needed supplies—Regulation of bids.

State officers, commissioners of boards, or departments, superintendents of state institutions or departments shall tabulate in detail the amount of supplies on hand at the beginning of each quarter and the additional supplies needed for the ensuing quarter. The state purchasing agent shall make examination of the amount of supplies on hand and shall determine from such examination and from the statements so furnished him, as in this action provided, the additional amount of supplies necessary and shall make an itemized statement thereof, all of which acts of said state purchasing agent shall be subject to approval of the governor. As soon as the state purchasing agent shall determine, as in this section provided, what kind of supplies and the amount necessary for the state of Montana to purchase for its state offices, boards, commissions, departments or institutions, he shall thereupon give notice in "daily newspapers of general circulation in the state of Montana and published in different localities therein," for at least twenty days that sealed proposals will be received by the state purchasing department, up to a time to be mentioned therein, for furnishing supplies for such state offices, boards, commissions, departments or institutions, which notice shall also state that detailed statements of supplies to be furnished are on file at the office of the state purchasing department and subject to inspection, and shall also specify that at a certain time, to be therein mentioned, said proposals will be opened, and contracts awarded to the lowest responsible bidder. Each proposal shall be accompanied by sample supplies proposed to be furnished, ample in quantity, to be divided, a part thereof, in case of award, to be kept in the office at the capitol and a part thereof, in case of award, to be sent to the place of intended delivery. The proposals shall be in writing, sealed and marked, "Proposals for furnishing supplies," and shall be addressed to the state purchasing agent, Helena, Montana. There shall be separate proposals and separate contracts for each class of material furnished. At the time mentioned in the said notice said proposals shall be opened, in public, and contracts awarded to the lowest responsible bidder. The department shall have the right to reject any and all bids. If all of such proposals shall be rejected, proposals shall again be invited and proceeded with in the same manner.

With any proposal the state purchasing agent may require a certified check on some responsible bank, payable to the treasurer of the state of Montana, equal in amount to five per cent of the sum of such proposal, as a guarantee for the faithful performance of any contract awarded. In case no award is made to the party the check shall be returned to him when a contract has been duly signed and bond approved. All proposals shall include the delivery of the supplies to the departments and institutions for which they are purchased.

The state officers, superintendent, commissioners, departments or institutions, shall [not] have the authority to purchase any supplies or material, except on approval of the state purchasing agent.

En. Sec. 7, Ch. 66, L. 1923.

293.8. Period of contract. No contracts shall be made for a longer period than one year and such contract shall provide for the delivery of such articles at such times and in such quantities as the purchasing agent may determine.

En. Sec. 8, Ch. 66, L. 1923.

293.9. Fresh fruits, etc., how purchased. Fresh fruits and vegetables (other than potatoes) shall not be included in the supplies to be purchased as hereinbefore provided. The state purchasing agent may allow, under proper rules, regulations and instructions approved by the state board of examiners, any state officer, board, commission or superintendent of state institution to purchase the fresh fruits and vegetables therefor, and make other and minor purchases for the same; an itemized account to be kept of all such purchases and furnished to the state purchasing department.

Likewise, when immediate delivery of articles or performance of service is required by the public exigencies, the articles or service so required may be procured by open purchase or contract at the place and in the manner in which such articles are usually bought and sold or such services engaged between individuals, but under the direction of the state purchasing agent and subject to the approval of the state board of examiners.

En. Sec. 9, Ch. 66, L. 1923.

293.10. Favoritism forbidden. The state purchasing agent, or any officer or employee thereof, shall have no right to show any partiality or favoritism in making such awards or contracts, but shall be absolutely fair and impartial; provided, that where both the bids and quality of goods offered are the same, preference shall be given to articles of local and domestic production and manufacture, and provided, further that where both the bids and the quality of goods offered are the same, preference shall be given to resident bidders of the state of Montana over non-resident bidders.

En. Sec. 10, Ch. 66, L. 1923.

293.11. Record of bids—Contracts in name of state. The state purchasing department shall have recorded in a book kept for that purpose,

a true and faithful abstract of all bids made for furnishing supplies and equipment for the state of Montana, giving the name of the party bidding, the terms of the offer, the sum to be paid, and shall keep on file and preserve all such bids until the end of the contract term to which they relate. Each bidder shall have the right to be present, either in person or by agent, when the bids are opened and shall have the right to examine and inspect all bids. All purchases, advertisements and contracts for supplies for any purpose authorized by law shall be made by the state purchasing department in the name of the state of Montana. The records shall be open at all times for the inspection of those who may be interested in such contracts made or to be made with the state of Montana.

En. Sec. 11, Ch. 66, L. 1923.

293.12. Transfer of contracts forbidden—Collusion—State officers not to be interested. No contract or order or any interest therein shall be transferred by the party to whom such contract or order is given to any other party, and any such transfer shall cause the annulment of the contract so transferred, at the option of the state. Collusion or secret agreements between bidders for the purpose of securing any advantage to the bidders as against the state of Montana in the awarding of contracts is hereby prohibited, and the state purchasing agent and state board of examiners if they shall find sufficient evidence after any contract has been let that said contract was obtained by any bidder or bidders, by reason of collusive or secret agreement among the bidders to the disadvantage of the state of Montana, shall have the right to declare any such contract null and void.

All rights of action, however, for any breach of such contract by the contracting parties are reserved to the state. No member of the legislature, nor any elective or appointive state officer, nor any deputy or employee thereof, nor superintendent of any state institution or any employee thereof, nor any person in the employ of the state of Montana in any capacity whatsoever, shall directly, himself, or by any other person in trust for him or for his use or benefit or on his account, undertake, execute, hold or enjoy, in whole or in part, any contract or agreement made or entered into by or on behalf of the state of Montana under the provisions of this act, and every person who violates the provisions of this section shall be deemed guilty of a misdemeanor and shall be fined not less than \$100 nor to exceed the sum of \$5,000.

En. Sec. 12, Ch. 66, L. 1923.

293.13. Inspection of warehouses. The warehouses, supplies, furnishings and property of all kinds used in and about the business of the state of Montana shall be subject at all times to the inspection and examination of the state purchasing department and any officer or employee of any office, board, commission or department.

En. Sec. 13, Ch. 66, L. 1923.

CHAPTER 20.

THE BUDGET SYSTEM.

294. Act to be cited, how.

Sections 294-304, were cited in Veto Case, 69 Mont. 325, 327, 35 A. L. R. 592, 222 Pac. 428. For text treatment of this subject see vol. 23 Cal. Jur. 550.

297. Blank form for requests.

Cited in Veto Case, 69 Mont. 325, 337, 35 A. L. R. 592, 222 Pac. 428.

298. Budget and supplementary appropriation bills.

Cited in Veto Case, 69 Mont. 325, 337, 35 A. L. R. 592, 222 Pac. 428.

299. Submission of budget to legislative assembly—Legislative action.

Cited in Veto Case, 69 Mont. 325, 337, 35 A. L. R. 592, 222 Pac. 428.

CHAPTER 22A.

ERECTION OF MONUMENT ON CAPITOL GROUNDS.

319.1. Monument—Erection on capitol grounds. Whereas, the Montana Pioneers' Association is desirous of erecting a suitable monument on the capitol grounds in commemoration of the early pioneers of this state;

Now, therefore, permission is hereby granted to said Pioneers' Association to erect such a monument of suitable and appropriate design and structure, within the grounds of the state capitol at Helena, Montana, at such point thereon as may be selected by said association, subject, however, to the approval of the state board of examiners.

En. Sec. 1, Ch. 40, L. 1927.

CHAPTER 23.

CUSTODIAN OF RECORDS OF GRAND ARMY OF REPUBLIC.

320. Custodian of records of Grand Army of Republic. The governor of the state of Montana is hereby authorized and directed to appoint a custodian of the records, mementoes, relics, documents, and archives of the Grand Army of the Republic, and the United Spanish War Veterans and history of the residents of the state of Montana who served in the army, navy or marine corps of the United States during the Civil War or during the Spanish-American War. The department commander, department of Montana of the Grand Army of the Republic or department commander of the United Spanish War Veterans, department of Montana, may recommend to the governor a suitable person to be appointed as such custodian, provided that the person appointed as such custodian must be a member of the Grand Army of the Republic of the department of Montana or of the United Spanish War Veterans, department of Montana.

Amd. Sec. 1, Ch. 96, L. 1927. .

321. Room for storing and safekeeping of records. The governor and secretary of state are hereby authorized and directed to set apart a

suitable room in the capitol building of the state of Montana for the storing and safekeeping of such archives, records, etc., of the Grand Army of the Republic and United Spanish War Veterans, and said room shall be suitably furnished, and shall be under the charge of the custodian so appointed.

Amd. Sec. 1, Ch. 96, L. 1927.

322. Purposes for which room shall be used. Said room shall be used by such custodian for the purpose of storing and exhibiting relics, mementoes, archives, and documents of the Civil War, and United Spanish War Veterans and for arranging and preserving the history of the residents of Montana who served in the army, navy, or marine corps of the United States during the Civil War or during the Spanish-American War, and any other literature which the department of Montana of the Grand Army of the Republic or the United Spanish War Veterans, department of Montana, may collect and desire to preserve as a part of the history of the state. Such records and exhibits shall be accessible at all times, under suitable rules and regulations, to all residents of this state, and other persons desirous of viewing such exhibits.

Amd. Sec. 1, Ch. 96, L. 1927.

323. Records to become property of state. All books, records, papers, relics, mementoes, and histories, and other effects of whatever nature applying to the department of the Grand Army of the Republic, or United Spanish War Veterans, and accorded space in this room, shall whenever such department ceases to exist as a department of the Grand Army of the Republic, or United Spanish War Veterans, become the property of the state of Montana.

Amd. Sec. 1, Ch. 96, L. 1927.

324. Expenses, how paid. The expense of collecting and maintaining such exhibits, including the salary of the custodian herein provided, shall not exceed the sum of twelve hundred dollars (\$1200.00), in any one year which shall be paid by the state treasurer in the same manner as other expenses and salaries of the state departments and employees or officers are paid.

Amd. Sec. 1, Ch. 96, L. 1927.

CHAPTER 26.

THE STATE BOARD OF HAIL INSURANCE.

350. Hail insurance board—Creation—Powers and duties—Farmers to file application. There is hereby created a state board of hail insurance of five members consisting of the state treasurer, and the commissioner of agriculture, labor and industry, who will be secretary of state board, and three other members to be appointed by the governor from the names submitted therefor by the duly organized farmer societies having a general membership throughout the state. The governor shall designate one of said appointive members to serve for three years to act as chairman of the board, one to serve for a term of two years, and one

to serve for a term of one year. Whenever the term of any member shall expire, either by death, resignation, or removal for cause, or expiration of his term of office, the governor shall appoint his successor, and shall also appoint one of the board for chairman in case of a vacancy in that office. Each appointive member of the board shall be appointed for three years, except where such appointment is made to fill a vacancy on the board, in which event such appointee shall fill out the unexpired term of the member whose place he fills. All members of the board shall be subject to removal for cause by the governor; the said board shall hold meetings when necessary and essential for the proper conduct of its business, at the state capitol in the office of the secretary, and is hereby authorized, directed and empowered to make such rules and regulations as it may from time to time find practical, necessary and beneficial for the conduct of the department of hail insurance, subject to the provisions of this act. It shall have full charge of said department as herein provided for; it shall prepare blank forms for all purposes necessary, proper and incidental to the effective operation and enforcement of this act, and furnish such forms to all public officers respectively charged with the performance of any official duty in connection therewith; it shall prepare a special form outlining the purposes, scope and benefits of this act in furnishing protection against loss by hail, at the actual cost of the risk to all taxpayers who may elect to become subject to the provisions of this act, such form to be submitted by the county assessor of each county at the time in which the regular assessments of property are by such assessors made, to each farmer in each county in the state engaged in growing of crops subject to injury or destruction by hail, on which forms each such farmer taxpayer shall signify whether he desires to become subject to the provisions of this act or not. Every such farmer taxpayer who signifies his desire to become subject to the provisions of this act, shall file in the office of the county assessor the blanks above referred to, properly filled out not later than August 15th, and shall be chargeable with the tax on lands growing crops subject to injury or destruction by hail, hereinafter provided for, and shall share in the protection and benefits under the hail insurance provisions of this act. Such application for hail insurance shall be in full force and effect at noon the day following the acceptance of the same by the county assessor. Provided, however, that this act shall not be so construed as to empower anyone except the actual owner of the land to make such land subject to the hail tax provided in this act.

Amd. Sec. 1, Ch. 40, L. 1923.

Construction of hail insurance policy, notes, 35 A. L. R. 267; 7 A. L. R. 363; 4 A. L. R. 1298.

350A. Limitation on insurance per acre. No more than ten dollars (\$10) insurance shall be written on each acre of grain. When more than one party desires hail insurance each shall be entitled to the share of the maximum represented by his interest in the crop. Either party may insure his share in the crop for any amount up to and including the maximum per acre if the others waive their right to insure.

En. Sec. 2, Ch. 40, L. 1923.

350B. Tax delinquencies, when a bar — Crop lien. No owner of land who has more than one year's delinquent taxes on his land shall be allowed hail insurance under the provisions of this act, unless his application is accompanied by a cash payment for the amount that would be due on said application in the event of a maximum levy for that year. Provided, however, any grain grower unable to secure state hail insurance under the provisions of this act on account of delinquent taxes or for other reasons, may make application to the county assessor of his respective county and said county assessor is hereby authorized to receive and accept such applications where the applicant furnishes a sufficient crop lien subject only to a seed lien. Provided, that such crop lien shall be accepted only under such rules, regulations and requirements as may be prescribed by the state board of hail insurance and providing that the state board of hail insurance may cancel any hail insurance accepted in violation of said rules, regulations and requirements. Upon receipt of said application the county assessor shall make record thereof and shall file the original in the office of the clerk and recorder of said county.

En. Sec. 3, Ch. 40, L. 1923.

351. Tax levy—Limitation on amount—Lien—Board may establish rates. A tax is hereby authorized and directed to be levied on all lands in this state growing crops subject to injury or destruction by hail, the owners of which have elected to become subject to the provisions of this act. The state board of hail insurance shall annually estimate as near as may be possible, the amount required to pay all losses, interest on warrants and costs of administration, and shall recommend a levy to be made on each kind of land respectively, subject to the provisions of this act, to the state board of equalization; provided, however, that such tax shall not exceed in any one year the sum of one dollar (\$1) per acre on lands sown to grain crops, nor fifty cents (50c) per acre on lands sown to hay crops; and provided further, that if the tax required to pay the estimated losses, interest on warrants and costs of administration be less than fifty cents (50c) per acre on lands sown to grain crops, and a proportionate amount on lands sown to hay crops, the said board of hail insurance must recommend a tax levy sufficient to raise the full amount thereof. In addition to the lien created above on the land of the insured, the levy for such hail insurance shall also constitute a lien on the crops insured. Said lien shall be enforced in the same manner as provided in section 7 of this act, and all applications for hail insurance shall be in such form as to constitute the lien herein provided.

The said board of equalization is hereby empowered and it is made its duty to prescribe such levies annually to be made against lands growing crops subject to injury or destruction by hail which are subject to this act, in accordance with the recommendation of the state board of hail insurance. Such tax levies respectively shall be chargeable to the lands of each taxpayer who shall elect to become subject to this act and shall be extended on the tax roll and collected by the officers charged with such duties in the manner and form as are other property taxes and if not paid shall be a lien on the lands against which the same are levied as are other property taxes. Provided, however, that the lien as provided

above shall in no way affect mortgages that are of record at the time of the approval of this act. The lien of any mortgage filed subsequent to the passage and approval of this act shall be subsequent to any lien for hail insurance hereafter levied thereon. All applicants securing hail insurance on crop liens as heretofore provided shall be subject to the same charges per acre as provided herein to be made on land. Notice of such assessment shall be mailed to each person insured, by the county treasurer in the same manner as are all other notices of taxes due. Said assessment shall be payable at the office of the county treasurers of each respective county.

The state board of hail insurance may when they deem it advisable establish as many districts as it deems advisable and may maintain maximum rates in various parts of the state, which rates shall be commensurate with the risk incurred as nearly as they can determine from past experiences or from any records available. The highest of these rates shall be the same as the maximum established herein and the lowest shall not be less than fifty cents (50¢) per acre on lands sown to grain crops, and a proportionate amount on lands sown to hay crops. Notice of the various rates established for any year shall be plainly printed on the applications for hail insurance, and in any year when the requirements of the hail insurance law as herein provided do not require a levy of the maximum rates as established, then the rates for the year shall be determined and levied by the state board of hail insurance for each of the various districts as established, in such proportion as will in their judgment be fair and equitable.

Amd. Sec. 4, Ch. 40, L. 1923.

352. Levy to provide what—Reserve fund. In making the levy provided in the preceding section the state board of hail insurance shall provide for:

1. The payment of all expenses of administration, together with all interest owed or to be owing on registered warrants.
2. For that portion of the losses incurred during the current year which are not paid from funds drawn from the reserve fund.
3. For the maintenance of the reserve fund, a part or all of which may be used in any one year for the purpose of paying the costs of administration, interest on the warrants and losses as the same shall be settled and adjusted by the said board.

Whenever the losses together with the expenses and costs of administration in any one year shall amount to a less amount than the sum of seventy cents (70¢) per acre for every acre of grain insured and a proportionate amount on hay crops, the state board of hail insurance may levy such amount as they may consider proper and just for the purpose of providing a reserve fund, providing, however, that such levy when added to the amount necessary to pay costs of administration, interest and losses for the current year shall not exceed the sum of seventy cents (70¢) per acre on lands sown to grain crops and a proportionate amount on hay crops and provided further that in any one year there shall not be added to the reserve fund an amount greater than the sum of five per cent (5%) of the total risk for that particular year and provided further,

that the amount of said reserve fund shall not exceed the sum of one million dollars. The reserve fund hereby created shall be a continuous fund and the state board of hail insurance is hereby granted the power to draw from said fund such amounts as it may deem necessary for the purpose of paying costs of administration, interest and losses and provided further, that whenever in any one year the costs of administration, interest and losses shall be less than the sum of fifty cents (50¢) per acre on lands sown to grain crops and a proportionate amount on hay crops the state board of hail insurance shall not draw on the reserve fund for any purpose, unless the amount required for the payment of losses, interest on warrants and costs of administration shall exceed the amount of the estimate made by the state board of hail insurance.

Amd. Sec. 5, Ch. 40, L. 1923.

354. County treasurer to collect levies—Board to assist—Release of liens. The county treasurer in each county in the state shall collect all levies made under this act in the same manner as other property taxes are collected and shall keep all moneys collected by him for hail insurance in a separate fund to be known as the hail insurance fund and remit same to the state treasurer in the same manner as provided by law for the remittance of other moneys due to the state. All county treasurers shall use due diligence in making the collections of the levies provided herein. Also the state board may furnish assistance needed at any time in making collections or may take over the collection of any levy at any time, depositing any collections therefrom with the treasurer of the county where the levy therefor was made. Whenever the amount due on any hail insurance secured by a crop lien is paid the treasurer shall promptly endorse on the lien on file in the office of the county clerk and recorder the amount paid thereon with the date of payment and such endorsement shall be a satisfaction and release of such lien.

Amd. Sec. 6, Ch. 40, L. 1923.

354A. Failure to pay insurance—Levy on grain. If the person receiving hail insurance secured by a crop lien fails to pay said insurance to the county treasurer by January first of the year following the year in which the crop so insured is grown the county treasurer shall after the first day of January deliver to the sheriff of said county a full, true and correct copy of the lien on file in the office of the clerk and recorder and such sheriff must immediately demand from the person or persons signing such lien, payment of the amount due thereon, and if the same is not paid to the sheriff upon such demand being made, the sheriff must forthwith seize and sell in the manner provided by law for the sale of personal property under execution, a sufficient amount of grain belonging to such person to pay the amount due for hail insurance together with interest and costs and expenses of seizure and sale.

En. Sec. 7, Ch. 40, L. 1923.

355. Duty of state treasurer—Hail insurance funds. The state treasurer shall receive all moneys paid to him under this act and shall place same to the credit of a fund to be known as the state hail insurance fund and

may from time to time transfer to the hail insurance administrative fund such sums as the state board may deem necessary and proper to pay the expenses of administration together with such sums as may be needed to pay all the warrants registered against the hail insurance administrative fund, plus the accrued interest thereon, and shall pay out of such funds on warrants drawn by the state auditor by order of the state board of hail insurance. If such warrants be presented and there be no money in the said funds to pay the same, such warrants shall be registered and thereafter bear interest at the rate of four per cent per annum until called for payment by the state treasurer. All interest and earnings obtained by the state treasurer for such moneys shall be credited to the respective funds. If at any time more funds are in the administrative fund than the board estimates are needed for the purposes mentioned above, the state treasurer may on the order of the state board of hail insurance transfer such funds back to the hail insurance fund as the state board may direct.

Amd. Sec. 8, Ch. 40, L. 1923.

358. Report of losses. That all losses by hail to crops insured under this act shall be reported within three (3) days thereafter by the owner of such crops, his agent or attorney to the state board of hail insurance, who shall require the claimant to make a statement of the losses sustained, the cause thereof and such other information as the state board of hail insurance may require, on the forms to be provided for such purpose.

Amd. Sec. 9, Ch. 40, L. 1923.

360. Appeals—Appointment of appraisers—Judgment. In case the party that has sustained the loss is dissatisfied with and refuses to accept the adjustments made by the official appraisers then he shall have the right to appeal to the state board of hail insurance, provided however, he shall make such appeal by registered mail within four (4) days after such disagreement. In case the adjuster who makes the second appraisal fails to secure an agreement the claimant shall then appoint one disinterested person as appraiser, and the official appraiser shall appoint another person as appraiser, and the two shall select a third disinterested person, and the three shall then proceed to adjust the loss in the same manner as specified in section 359 and the judgment of the majority shall be the judgment of said appraisers and shall be binding upon both parties as the final determination of said loss; provided, however, that if the insured does not recover a greater sum than allowed by the official appraiser in the first instance, he shall pay the expenses of the said three appraisers and their witnesses in making said adjustment, but if he is awarded a larger sum then the same shall be paid by the state board of hail insurance out of the hail insurance fund.

If the insured shall be required to pay the expenses of such reappraisement as above provided, the state board of hail insurance is hereby authorized to deduct the amount of such expenses from the amount allowed said insured before making settlement for said loss.

Provided, also, that where any claimant demands arbitration he shall, if required by the board, furnish a cash bond to the state board of hail insurance in the sum of ten dollars, (\$10) which shall accompany his application. If there is not sufficient allowance made to any claimant after arbitration to cover the cost of arbitration without the use of the ten dollars, (\$10) forfeit, then the state board may use a part or all of said cash bond. Any forfeits so collected shall be placed promptly in the state hail insurance fund. In cases where the claimant secures an increase the bond shall be promptly returned to the claimant.

The state board of hail insurance shall examine all reports of appraisers and verify the same, and adjust all losses, and for such purposes may order hearings, subpoena witnesses, and conduct examinations and do all things necessary to secure a fair and impartial appraisal of losses by hail.

Amd. Sec. 10, Ch. 40, L. 1923.

361. Payment of losses—Borrowing money—Interest on warrants.

The state board of hail insurance shall, as soon as practicable after the loss has been sustained, arrange for the payment of the losses as follows: From the amount of the loss as adjusted for each claimant the state board of hail insurance shall deduct the amount the claimant then owes as delinquent hail insurance tax and the maximum amount assessed as hail insurance tax for the current year, and shall make settlement within forty (40) days from the time loss is sustained in the following manner: By paying, either by registered warrant or otherwise if funds are immediately available, fifty per cent of the total loss as agreed on, less, however, the maximum rate of the assessment; balance to be paid at the expiration of the hail season. The state board of hail insurance shall, on or before November first, order the state auditor to draw a warrant for the amount so deducted on the state hail insurance fund, which warrant shall be remitted to the county treasurer of the county in which the tax was assessed. The state board of hail insurance shall then order the state auditor to draw a warrant on the state hail insurance fund for the balance of the adjustment which warrant shall be sent to the claimant; provided, however, that in no case shall the payment for loss exceed ten dollars (\$10) per acre for grain crops, and five dollars (\$5) per share for hay crops; provided, further, that no claimant shall receive payment for any loss incurred where said loss does not exceed five per cent (5%) of the total value of the crop insured. Also if the losses in any year should exceed the current levy plus the reserve fund, if any, then the payment of all losses shall be prorated share and share alike among all grain growers having loss claims adjusted and approved. In any year the state board of hail insurance may by resolution authorize its chairman and secretary to borrow as needed from any person, bank or corporation such sum or sums of money as the state board may deem necessary to carry on the business of the department and for the purpose of paying all warrants as issued. For any moneys borrowed under the provisions of this act, the state board of hail insurance shall cause warrants to be drawn against the state hail insurance fund and said warrants shall bear interest at not to exceed six per cent (6%) per annum and said warrants

and the interest thereon shall be paid out of funds from the state hail insurance department as they are collected from the various counties in the state. The state board of hail insurance shall not at any time borrow a total sum greater than the amount of the levies as made for taxes for the current year, together with such delinquent taxes as remain unpaid on the books of the county treasurer. The state board of examiners is hereby empowered to invest surplus money belonging to any fund in the warrants of the hail insurance fund.

Amd. Sec. 11, Ch. 40, L. 1923.

363. Compensation of chairman—Duty of other officers. It shall be the duty of all public officers to perform the duties relative to hail insurance under this act, without other compensation than that allowed by law. The chairman of the state board of hail insurance shall receive a salary of two hundred dollars, (\$200) per month while actually engaged in service and actual traveling expenses, and all appointive officers under this act shall be paid their actual traveling expenses and shall be allowed such per diem as the state board of hail insurance may determine for each day of eight hours while actually engaged in service under this act, out of the hail insurance administrative fund.

The chairman of the state board of hail insurance shall each year submit a full financial report of the operations of the department to the governor of the state.

Amd. Sec. 12, Ch. 40, L. 1923.

363.1. Benefits exempt from execution. All money or benefits received from hail insurance shall be exempt from execution and shall not be liable to attachment nor to be seized, taken nor appropriated by any local process to pay any debt or liability of the insured unless the amount shall be assigned and then for no more than the amount of the claim intended to be secured by the assignment with lawful interest.

En. Sec. 13, Ch. 40, L. 1923.

CHAPTER 31.

THE REPORTERS OF THE DECISIONS OF THE SUPREME COURT.

380. Reports, how published. The reports must be published in volumes of not less than six hundred pages each, in the size and style of volume 2, Montana Reports, and equal in quality, press work, and binding to said volume.

Amd. Sec. 1, Ch. 1, L. 1925.

381. Publisher's contract—Proposals for printing. The justices shall have no pecuniary interest in the volumes of reports. The reports must be published by contract to be entered into by the justices and with the publishing house that will agree to publish the new volumes of the Montana Reports for a period of six years also to furnish complete sets or odd volumes of Montana Reports from and including volume one to the last volume published, to the state and the people of the state at prices fixed in the contract. Such contract shall require the publisher to print each

volume in accordance with the specifications set forth in the preceding section. It shall also require the publisher to issue each new volume within ninety days after the manuscript for the same is delivered by the justices to the said publisher. Such contract shall also require the publisher to make stereotype matrices of each volume so published by him, and to preserve these matrices in fireproof vaults, to the end that the volumes will never become out of print. The publisher receiving the contract as herein provided shall, before commencing the publication of the volumes of such reports, advertise in two newspapers in Montana for ten days for proposals for such printing, stereotyping, and binding of such volumes, and such publisher shall, if the proposals for such work do not exceed by the sum of twenty per cent, the amount for which the same can be done outside of the state, cause such printing, stereotyping, and binding to be done within the state of Montana.

Amd. Sec. 2, Ch. 1, L. 1925.

383. Delivery by publisher — Maintenance stock — Bond. Said contract shall require the publisher to agree to sell three hundred copies of each new volume of said reports to the state of Montana at the price agreed upon in said contract, and to keep on hand and for sale at the contract price a sufficient number of copies of each volume to supply all demands for six years from the date of the publication thereof. And said publisher shall give bond for the fulfillment of the terms of this contract in the sum of five thousand dollars, which bond shall be filed with the clerk of the supreme court and be approved by the justices of the supreme court, or a majority thereof.

Amd. Sec. 3, Ch. 1, L. 1925.

CHAPTER 32.

NOTARIES PUBLIC.

388. Powers and duties.

This section, prior to amendment, did not require a notary public to affix his seal to an affidavit; hence its absence from a verification to a claim against an estate made in 1907 did not render the verification insufficient. In *re Stinger Estate*, 61 Mont. 173, 201 Pac. 693.

For text treatment of this subject see vol. 20 Cal. Jur. 224.

Power of notary to take affidavit as basis for warrant of arrest, note, 16 A. L. B. 924.

CHAPTER 35.

DISQUALIFICATIONS AND RESTRICTIONS.

412. County officers not to act as deputy. No county officer, under salary, must be appointed or act as deputy of another officer of the same county except in cases where the officer so appointed agrees to act and serve as such deputy without additional compensation.

Amd. Sec. 1, Ch. 21, L. 1925.

CHAPTER 36.

POWERS OF DEPUTIES.

418. Powers of deputies.

Where a public officer is authorized to appoint a deputy, the authority of the latter, unless otherwise limited, is commensurate with that of the appointing officer, and any act which the latter might do, the deputy may also do, under this section. *State v. Crouch*, 70 Mont. 551, 227 Pac. 818.

Cited in *State v. Larson*, 75 Mont. 274, 276, 243 Pac. 566.

For text treatment of this subject see vol. 21 Cal. Jur. 1007.

Signature of deputy to certificate of acknowledgment, note, 29 A. L. R. 965.

CHAPTER 37.

APPOINTMENTS, NOMINATIONS AND OATH OF OFFICE.

420. Deputies and subordinate officers.

Under this section and 4731, a county attorney may appoint a deputy to serve without compensation and such deputy may legally act in the name of his principal in the filing of informations and the prosecution of criminal actions. *State v. Crouch*, 70 Mont. 551, 227 Pac. 818.

Cited in *In re Claims of Hyde*, 73 Mont. 363, 366, 236 Pac. 248.

For text treatment of this subject see vol. 21 Cal. Jur. 844.

421. Number of deputies.

Cited in *State v. Crouch*, 70 Mont. 551, 552, 227 Pac. 818.

For text treatment of this subject see vol. 21 Cal. Jur. 1006.

426. Commissions by the governor.

Sections 426-428 were cited in *State v. Rouleau*, 68 Mont. 529, 540, 219 Pac. 1096.

For text treatment of this subject see vol. 21 Cal. Jur. 825-827.

430. Oath, form of.

Cited in *State ex rel. Muzzy v. Uotila et al.*, 71 Mont. 351, 354, 229 Pac. 724.

For text treatment of this subject see vol. 21 Cal. Jur. 871.

432. Time of filing oath.

Cited in *State ex rel. Muzzy v. Uotila et al.*, 71 Mont. 351, 354, 229 Pac. 724.

For text treatment of this subject see vol. 21 Cal. Jur. 869.

CHAPTER 38.

COMPENSATION OF STATE OFFICERS AND EMPLOYEES.

437. Salaries of board of examiners and consolidated boards.

Cited in *State v. Rouleau et al.*, 68 Mont. 529, 540, 219 Pac. 1096.

439. Salaries of janitors and other capitol employees. From and after the passage of this act, the salaries of watchmen, and capitol guides employed in the state capitol building at Helena, Montana, shall be the sum of three dollars and fifty cents (\$3.50) per day. The salaries of janitors shall be four dollars (\$4) per day. The engineers employed at the powerhouse of the state capitol shall be paid the sum of five dollars

(\$5) per day, and the head engineer and carpenter shall be paid the sum of five dollars and fifty cents (\$5.50) per day.

Amd. Sec. 1, Ch. 124, L. 1925.

440.1. Salary of supreme court stenographer. The annual compensation allowed to the official stenographer of the supreme court is twenty-six hundred dollars (\$2,600).

En. Sec. 1, Ch. 83, L. 1927.

440.2. Salary of deputy secretary of state.

The annual compensation allowed to the deputy secretary of state shall be \$3,000.

En. Sec. 1, Ch. 151, L. 1927.

440.3. Salary of deputy state treasurer.

The annual compensation allowed to the deputy state treasurer shall be \$3,000.

En. Sec. 2, Ch. 151, L. 1927.

440.4. Salary of deputy state auditor.

The annual compensation allowed to the deputy state auditor shall be \$3,000.

En. Sec. 3, Ch. 151, L. 1927.

440.5. Salary of deputy insurance commissioner.

The annual compensation allowed to the deputy insurance commissioner shall be \$3,000.

En. Sec. 4, Ch. 151, L. 1927.

443. Limitation of expenses of public officers' attendance at conventions. Hereafter no state, county, city or school district officer or employee of the state, or of any county or city, or of any school district, shall receive payment from any public funds for traveling expenses or other expenses of any sort or kind for attendance upon any convention, meeting or other gathering of public officers, save and except for attendance upon such convention, meetings or other gatherings, as said officer may by virtue of his office be required by law to attend, provided, that nothing herein shall prohibit the state board of examiners from authorizing the payment of the necessary traveling expenses of any state officer or employee, whenever in the judgment of said board public interest requires, and provided further that the board of trustees of any county or district high school or of any school district may by resolution adopted by a majority of entire board make their district a member of any state association of school districts or school district trustees, and authorize the payment of the dues to such association, and the necessary traveling expenses of an employee, or one member of said board, to attend meetings of such association, or other meetings called for the express purposes of considering educational matters. Provided, further, one member of board of county commissioners may be allowed actual transportation

expenses and per diem for attendance upon any general meeting of county commissioners or assessors held within the state not oftener than once a year and the proportionate expenses and charges against each county as a member of such association shall also be paid.

Amd. Sec. 1, Ch. 124, L. 1923; Amd. Sec. 1, Ch. 48, L. 1927.

CHAPTER 39.

PROHIBITIONS AND GENERAL PROVISIONS APPLICABLE TO PUBLIC OFFICERS.

451. Title contested, salary must not be paid.

Cited as section 375, Revised Codes, in For text treatment of this subject see
Wilkinson v. LaCombe, 59 Mont. 518, vol. 21 Cal. Jur. 244.
526, 197 Pac. 836.

458.1. State officers to file itemized statement expenses. Every person engaged in any service in every department of state, inclusive of persons in elective or appointive positions or positions created by law, whose duties consist of full or partial time in traveling to perform any service for the state under monthly or yearly salary, or who may be sent by any authorized executive of any department of the state upon a mission in performance of any clerical work, investigating, reporting, examining, educational service, demonstration work, supervisory or extension work or otherwise of every kind and character, shall make an itemized statement tersely stating in what capacity engaged each day while away from the department in which said daily duties may arise and the expense incurred daily and shall render to the board of examiners the said itemized statement, and at the end of each month, or if sooner required by said board, the said person so engaged shall render a total or recapitulation account thereof in a form to be prescribed by said board.

En. Sec. 1, Ch. 108, L. 1925.

458.2. Form of statement. That the form mentioned in section one above shall be substantially in small paper booklet form for each month with a page for every day showing expense items of each day in detail, such as meals, railroad fare, lodging, livery, telephone, telegrams and other items, and opposite each page in said monthly booklet, there shall be another page or space whereon mention shall be made by such person of the kind of duty performed on said day.

En. Sec. 2, Ch. 108, L. 1925.

458.3. Files. That said board of examiners shall keep a separate file for each person engaged in this act contemplated, and file reports and statements from each said person therein to be kept under the distinct and separate months of the year and group said files under each month of the year.

En. Sec. 3, Ch. 108, L. 1925.

458.4. Investigation of reports. That every three months the said board shall investigate at one of its meetings the reports and files of each

person who may be employed as herein mentioned, and make record in the minutes of the board meeting as to any apparent duplication of services of any person with another within the same department or with other departments of state or the overlapping of such service as stated above from or within any department, and said board shall make recommendations to one or more departments regarding the elimination of services of persons who, in the opinion of the board, are unnecessarily employed, and when within the power of the said board to dispense with the services of said persons, to consolidate the work of any two or more persons.

En. Sec. 4, Ch. 108, L. 1925.

458.5. Separate reports. The statements and reports herein required to be made by the persons employed in various departments shall be distinct and separate from other reports and detail that may be required to be made to the departments wherein such persons are respectively employed.

En. Sec. 5, Ch. 108, L. 1925.

458.6. Construction of act. That this act shall not be construed to change in any manner the existing laws of the state pertaining to the conduct of any county, city or municipal office.

En. Sec. 6, Ch. 108, L. 1925.

463.1. Sinking fund—Duty of officers to provide. That when any officer or officers or board or body of officers of any county, city, school district, irrigation district or other municipal or public corporation of the state are or shall be required by law to provide by a levy of taxes, or by certifying the amount of money required, or otherwise, a sinking fund or fund required to pay at maturity any bonds hereafter issued or created, such officer or officers and the members of such board or body of officers shall be jointly and severally liable to the county, city, school districts, irrigation district, or other municipal or public corporation which they represent if they shall fail to perform any such duties so required by law, as in this section hereby specified, in an amount equal to the sum which would have been added to such fund had they performed such duty. Provided: that when any such board shall fail or neglect to perform any such duty, no minority member of said board who shall have moved said board or voted in favor of a performance of such duty shall be held liable.

En. Sec. 1, Ch. 5, L. 1923.

463.2. Penalty for wrongful appropriation. Any person or persons who shall take, use, appropriate or permit to be taken, used or appropriated any portion of any such fund as herein specified for any purpose other than that permitted by law shall be jointly and severally liable to the county, city, school district, irrigation district, or other municipal or public corporation to which said fund shall belong for the portion of such fund so unlawfully taken, used or appropriated.

En. Sec. 2, Ch. 5, L. 1923.

463.3. Duty of county attorney. It shall be the duty of the county attorney in each county to commence and prosecute all actions to enforce any liability hereby created. Such action shall be tried as civil actions at law.

En. Sec. 3, Ch. 5, L. 1923.

CHAPTER 40.

OFFICIAL BONDS.

471. Approval of bonds of county and township officers.

Where a constable assumed office and performed his duties with the acquiescence of the surety, absence of the approval of his official bond by the judge as required by this section will be held to be a mere defect, which under section 484 does not render the bond void,

so as to discharge the surety from liability. *Stabler v. Adamson et al.*, 73 Mont. 490, 237 Pac. 483.

For text treatment of this subject see vol. 21 Cal. Jur. 926.

474. Bond not to be filed before approval.

Cited in *Stabler v. Adamson et al.*, 73 Mont. 490, 237 Pac. 483.

For text treatment of this subject see vol. 21 Cal. Jur. 928.

475. Conditions, signatures, and sureties.

Cited in *Wells-Dickey Co. v. Benjamin*, 74 Mont. 170, 175, 239 Pac. 771.

For text treatment of this subject see vol. 21 Cal. Jur. 923, 924.

Liability on bond of members of governmental banking department, note, 38 A. L. R. 663.

Liability on bond of peace officer for negligence causing personal injury or

death, notes, 18 A. L. R. 197; 39 A. L. R. 1306.

Liability on bond of officer for defaults and misfeasances of deputies, clerks or assistants, note, 12 A. L. R. 980.

Liability of notary public on his bond, note, 18 A. L. R. 1302; 31 A. L. R. 920.

Constitutionality of statute relieving officer or his surety from liability for loss of public funds, note, 38 A. L. R. 1512.

482. Suit on bonds.

Cited in *State ex rel. Duggan v. District Court*, 65 Mont. 197, 200, 210 Pac. 1062.

For text treatment of this subject see vol. 21 Cal. Jur. 936.

Jurisdiction of action upon bond of

public officer of another state or country, note, 26 A. L. R. 1001.

Individual's right to maintain action on bond of peace officer, note, 19 A. L. R. 73.

Leave of court as prerequisite to suit on bond, note, 2 A. L. R. 563.

484. Defects not to affect liability.

A depository of public funds is not an officer and a depository bond is not an official bond within the meaning of this section, providing that if there are any defects in the approval or filing thereof, etc., the bond shall not be void so as to discharge the officer or his sureties. *State ex rel. Urton v. American Bank & Trust Co.*, 75 Mont. 369, 243 Pac. 1093.

While the official bond of a constable is required by section 471, to be approved by the district judge before filing with the county recorder, where, though properly filed, it was not so approved, and the officer assumed office and per-

formed his duties during his entire term with the acquiescence of the surety, absence of approval by the judge will be held to have been a mere defect, which under this section does not render the bond void so as to discharge the surety from liability. *Stabler v. Adamson et al.*, 73 Mont. 490, 237 Pac. 483.

Cited in *Stabler v. Adamson*, 73 Mont. 490, 237 Pac. 483.

For text treatment of this subject see vol. 21 Cal. Jur. 923, 925.

Invalidity of designation of officer or fiduciary as affecting liability on bond, note, 18 A. L. R. 274.

503. Application of chapter to what bonds.

Neither by adoption in 1909 of the Codes of 1907 nor by adoption of the Codes of 1921 by chapter 54, Laws of 1925, may the legislature be said to have intended to approve an amendment to section 1084 of the Codes of 1895 with relation to bonds of officers made in 1899 declaring the section applicable to all bonds required by law, which amendment was held invalid and by inadvertence of the Code commissioner included in the codification of 1907 as section 412,

and again included in the Codes of 1921 as section 503; hence a depositary bond, not being an official bond, was not affected by the attempted amendment thus erroneously carried forward into the codes. *State ex rel. Urton v. American Bank & Trust Co.*, 75 Mont. 369, 243 Pac. 1093.

For text treatment of this subject see vol. 11 Cal. Jur. 214, 394; vol. 12 Cal. Jur. 294; vol. 22 Cal. Jur. 484.

CHAPTER 41.**RESIGNATIONS AND VACANCIES.****511. Vacancies, how they occur.**

The word "term" as used in this section applies to the office and not to the person holding it. *State ex rel. Morgan v. Knight*, 76 Mont. 71, 245 Pac. 267.

Cited in *State ex rel. Muzzy v. Uotila et al.*, 71 Mont. 351, 355, 229 Pac. 724.

For text treatment of this subject see vol. 21 Cal. Jur. 856 et seq.

CHAPTER 45.**PUBLICATION OF QUESTIONS SUBMITTED TO POPULAR VOTE.**

537.1. Manner of publishing constitutional amendments. Whenever a proposed constitutional amendment or amendments, are submitted to the people of the state for popular vote the secretary of state shall cause the said proposed amendment or amendments to be published in full once a week in one newspaper in each county of the state if such there be, for three (3) months previous to the next general election for members to the legislative assembly. The cost of publication of said amendment, or amendments, shall be a proper charge against the state at the rate, as provided for in the statutes for state printing.

Such publication shall not be had in more than one paper in any one county of the state.

En. Sec. 1, Ch. 62, L. 1927.

CHAPTER 46.**QUALIFICATIONS AND PRIVILEGES OF ELECTORS.**

540.1. Qualification of voters on creation of public indebtedness. That from and after the passage and approval of this act, only such registered electors of the state, county, city, town, school district, or other municipal corporation, whose names appear upon the last preceding assessment-roll shall be entitled to vote upon any proposal to create or increase any indebtedness of state, county, city, town, school district or other municipal corporation, required by law to be submitted to a vote of the electors thereof.

En. Sec. 1, Ch. 98, L. 1923.

540.2. Preparation and posting lists of voters. The county clerk shall, immediately after the closing of the registration books of his county preceding such election, as provided by law, prepare lists of the registered electors of the county, city, town, school district, or other municipal corporation whose names appear upon the last preceding assessment-roll, and shall prepare poll-books therefor as provided by section 568, Revised Codes of Montana of 1921, and furnish copies thereof to the city, town, school district or municipal corporation in which such election is to be held for which he shall receive compensation as provided in section 571, Revised Codes of Montana of 1921. Whenever the election is upon a proposal to create or increase the debt of the state or of a county, the county clerk shall post lists of such electors as provided in section 567, Revised Codes of Montana of 1921. When the election is upon a proposal to create or increase the indebtedness of a city, town, school district or other municipal corporation, the county clerk shall deliver such lists to the clerk of the city, town, school district or other municipal corporation, holding such election, and it shall be his duty to post such lists in the manner provided in said section 567. Provided, however, that nothing in this act contained shall apply to or affect any such election called at the time of the passage and approval hereof.

En. Sec. 2, Ch. 98, L. 1923.

540.3. Validation of certain county bond issues. That all elections heretofore held authorizing the issuance of bonds of any county of the state of Montana to create or increase any indebtedness of such county where such election was not called upon a petition of twenty per cent of the qualified registered electors who are taxpayers upon property within said county and where the election was participated in, and the question was submitted to a vote of the electors rather than to the registered electors whose names appeared upon the last preceding assessment-roll as required by chapter 98 of the Laws of 1923, are hereby declared to be valid and legal and such bonds when issued and sold are hereby declared to be legal and binding obligations of such county issuing the same providing that the proposition to create or increase said indebtedness and to issue said bonds received a majority of all votes cast upon the proposition at the election when the proposition was voted upon, and provided further that all other requirements of law have been fully complied with.

En. Sec. 1, Ch. 56, L. 1927.

CHAPTER 47.

ELECTION PRECINCTS.

545. Establishment of election precincts.

Sections 545, 546, 548, 550 and 551 were cited in *Atkinson v. Roosevelt County et al.*, 71 Mont. 165, 181, 227 Pac. 811.

For text treatment of this subject see vol. 10 Cal. Jur. 41 et seq.

551. Proceedings where place not designated, etc.

Where a board of county canvassers refused to canvass election returns from a precinct on the ground that it appeared upon the face of the returns that

the election had not been held at the place designated by the board of county commissioners, and on application for writ of mandate to compel them to act nothing was shown affirmatively by pleadings or otherwise that the judges of election at the precinct had not pursued the statute, giving them authority to change the place of election upon two

days' notice if for any reason it cannot be held at the place appointed, it will be presumed that official duty was regularly performed by them and that they did change it, and the writ will issue commanding action. *State ex rel. Moore v. Patch et al.*, 65 Mont. 218, 211 Pac. 202.

552. Voting precinct, establishment at Indian agency.

An election held at an Indian trading post will not be declared invalid as in violation of this section, forbidding the establishing of a voting precinct at an Indian agency or trading post, the statute being directory merely, and it appearing that no person in the precinct

was deprived of his vote by reason of the election having been held there, that the election was honestly and fairly conducted, and that all electors believed their ballots had been legally cast. *Atkinson v. Roosevelt County et al.*, 71 Mont. 165, 227 Pac. 811.

CHAPTER 48.

REGISTRATION OF ELECTORS.

574. Residence, rules for determining.

Cited in *State ex rel. Johnson v. Kassing*, 74 Mont. 25, 30, 238 Pac. 582.

For text treatment of this subject see vol. 10 Cal. Jur. 48, 49.

Absent voters law, notes, 14 A. L. R. 1256; 19 A. L. R. 308; 35 A. L. R. 819.

Validity of statute requiring information as to residence as condition of registration or right to vote, note, 14 A. L. R. 260.

Residence or domicile of student or teacher for purpose of voting, note, 37 A. L. R. 138.

576. Voter to sign precinct register books.

The failure of the election judges of a precinct to require the electors to sign the registry books before voting at a primary election was the fault of the

judges and not of the electors, and therefore, such votes were legal and properly counted. *Thompson v. Chapin*, 64 Mont. 376, 209 Pac. 1060.

582. "Election" defined.

Cited in *Thompson v. Chapin*, 64 Mont. 376, 384, 209 Pac. 1060.

For text treatment of this subject see vol. 10 Cal. Jur. 15.

CHAPTER 49.

JUDGES AND CLERKS OF ELECTION.

587. Judges of election—How appointed. The board of county commissioners of the several counties at the regular session next preceding a general election, must appoint five judges of election for each precinct in which the voters therein, by the last registration, were two hundred or more and three judges of election for each precinct in which such registration was less than two hundred.

Amd. Sec. 1, Ch. 43, L. 1923.

For text treatment of this subject see vol. 10 Cal. Jur. 43.

588. Number of judges to be appointed. The board of county commissioners, notwithstanding the registration, may appoint five judges of each precinct in which upon information obtained by them they have reason to believe contains two hundred voters or more and three judges

of election in precincts which upon information obtained by them, they have reason to believe was less than two hundred.

Amd. Sec. 2, Ch. 43, L. 1923.

CHAPTER 51.

NOMINATION OF CANDIDATES FOR SPECIAL ELECTIONS BY CONVENTION OR PRIMARY MEETING OR BY ELECTORS.

612. Convention or primary meeting defined.

Since the initiative primary law was not enacted to prevent nominations but to subject them to public regulation and control as far as possible and did not repeal this section so far as it relates to political parties coming into existence after the holding of the primary election, the said section was the only law

under which the Socialist party organized in September, 1922, could proceed to make its nominations. State ex rel. Mills v. Stewart, 64 Mont. 453, 210 Pac. 465.

Sections 612-615 were cited in State ex rel. Wheeler v. Stewart, 71 Mont. 358, 363, 230 Pac. 366.

615. Certificates of nomination otherwise made.

A candidate for presidential elector is a candidate for public office within the meaning of this section, and may therefore be nominated independently. State ex rel. Wheeler v. Stewart, 71 Mont. 358, 230 Pac. 366.

This section, providing that candidates for public office may be nominated other-

wise than by convention or primary meeting, to wit, by petition, is applicable to the nomination of independent candidates. State ex rel. Wheeler v. Stewart, 71 Mont. 358, 230 Pac. 366.

For text treatment of this subject see vol. 10 Cal. Jur. 69.

618. When certificate to be filed. Certificate of nomination to be filed with the secretary of state must be filed not more than sixty (60) days and not less than thirty (30) days before the date fixed by law for the election. Certificates of nomination herein directed to be filed with the county clerk must be filed not more than sixty (60) days and not less than thirty (30) days before the election; certificates of the nomination of candidates for municipal offices must be filed with the clerks of the respective municipal corporations not more than thirty (30) days and not less than ten days previous to the day of election; but the provisions of this section shall not be held to apply to nominations for special elections to fill vacancies.

Amd. Sec. 1, Ch. 64, L. 1925.

For text treatment of this subject see vol. 10 Cal. Jur. 70.

619. Certification names of nominees. Not less than twenty-five nor more than forty days before an election to fill any public office, the secretary of state must certify to the county clerk of each county within which any of the electors may by law vote for candidates for such office, the name and description of each person nominated, as specified in the certificates of nomination filed with the secretary of state.

Amd. Sec. 1, Ch. 58, L. 1925.

Cited in State ex rel. Wheeler v. Stewart, 71 Mont. 358, 363, 230 Pac. 366.

620. Declining of nominations. Whenever any person nominated for public office, as in this chapter provided, shall at least twenty days before election, except in the case of municipal election, in writing, signed by

him, notify the office [officer] with whom the certificate nominating him is by this chapter to be filed, that he declines such nomination, such nomination shall be void. In municipal elections, such declination shall be made at least five days before the election.

Amd. Sec. 1, Ch. 15, L. 1925.

CHAPTER 52.

PARTY NOMINATIONS BY DIRECT VOTE—THE DIRECT PRIMARY.

631. Construction of law.

Under the rule that where two statutes are enacted at the same time upon the same subject, they must be construed together and effect given to both if possible, held that the provisions of the Primary Law and the Corrupt Practices Act, in so far as they refer to election

contests, provide a complete and workable system, omitting section 30 of the Primary Law. *Wilkinson v. LaCombe*, 59 Mont. 518, 197 Pac. 836.

Cited in *Thompson v. Chapin*, 64 Mont. 376, 383, 209 Pac. 1060.

632. Date of primaries. On the third Tuesday of July preceding any general election (not including special elections to fill vacancies, municipal elections in towns and cities, irrigation district and school elections) at which public officers in this state and in any district or county are to be elected, a primary nominating election shall be held in accordance with this law in the several election precincts comprised within the territory for which such officers are to be elected at the ensuing election, which shall be known as the primary nominating election, for the purpose of choosing candidates by the political parties, subject to the provisions of this law, for senator in congress, and all other elective state, district and county officers, and delegates to any constitutional convention or conventions that may hereafter be called, who are to be chosen, at the ensuing election wholly by electors within this state, or any subdivision of this state, and also for choosing and electing county central committeemen by the several parties subject to the provisions of this law.

Amd. Sec. 1, Ch. 118, L. 1925; Amd. Sec. 1, Ch. 3, L. 1927.

For text treatment of this subject see vol. 10 Cal. Jur. 56.

Cited in *State ex rel. Mills v. Stewart*, 64 Mont. 453, 463, 210 Pac. 465.

639. Political party nominations made exclusively as herein provided. Every political party which has cast three per centum (3%) or more of the total vote cast for representative in congress at the next preceding general election in the county, district or state for which nominations are proposed to be made, shall nominate its candidates for public office in such county, district or state, under the provisions of this law, and not in any other manner; and it shall not be allowed to nominate any candidate in the manner provided by section 612 of this code. Every political party and its regularly nominated candidates, members, and officers, shall have the sole and exclusive right to the use of the party name and the whole thereof, and no candidate for office shall be permitted to use any word of the name of any other political party or organization than that of and by which he is nominated. No independent or nonpartisan candidate shall be permitted to use any word of the name of any existing political party

or organization in his candidacy. The names of candidates for public office nominated under the provisions of this law shall be printed on the official ballots for the ensuing election as the only candidates of the respective political parties for such public office in like manner as the names of the candidates nominated by other methods are required to be printed on such official ballots.

Any political party that did not cast three per centum (3%) or more of the total vote cast for representative in congress, as above, and any new political party about to be formed or organized, may make nominations for public office as provided in section 612 of this code.

Amd. Sec. 1, Ch. 7, L. 1927.

Assuming (but not deciding) that an existing political party may use the term "Independent" in its party name, such use cannot deprive another candidate from employing that term in designating the character of his candidacy for the same office, and the provision of this section, prohibiting an independent candidate from using any word of the

name of an existing political party has no application in such circumstances. (See special concurring opinion of Mr. Justice Holloway.) State ex rel. Wheeler v. Stewart, 71 Mont. 358, 230 Pac. 366.

Cited in State ex rel. Mills v. Stewart, 64 Mont. 453, 456, 210 Pac. 465.

For text treatment of this subject see vol. 10 Cal. Jur. 59.

640. Petitions for nomination to be filed. Any person who shall desire to become a candidate for nomination to any office under this law shall send by registered mail, or otherwise, to the secretary of state, county clerk, or city clerk, a petition for nomination, signed by himself, accompanied by the filing fee hereinafter provided for, and such petition shall be filed and shall be conclusive evidence for the purpose of this law that such elector is a candidate for the nomination by his party. All nominating petitions pertaining to congressional, state or district offices to be voted for in more than one county, and for judges of the district court shall be filed in the offices of the secretary of state; for county and district offices, to be voted for in one county only, and for township and precinct offices, shall be filed in the office of the county clerk; and for all city offices in the office of the city clerk.

The fees required to be paid for filing such petitions shall be as follows:

For any office with a salary attached of one thousand dollars (\$1,000) or less per annum, ten dollars (\$10); except candidates for the state senate and house of representatives shall be fifteen dollars (\$15).

For any office with a salary attached of more than one thousand dollars (\$1,000) per annum, one per cent (1%) of total amount of annual salary.

For the office of county commissioner in counties of the first class forty dollars (\$40); in counties of the second class, thirty-five dollars (\$35); in counties of the third class, thirty dollars (\$30); in counties of the fourth class, twenty-five dollars (\$25); in all other classes of counties ten dollars (\$10).

For the office the compensation of which consists of fees instead of a salary, five dollars (\$5).

For state, county and precinct committeeman, delegates to national conventions and presidential electors no fees shall be required to be paid.

Any person receiving the nomination by having his name written in on the primary ballot, and desiring to accept such nomination, shall file with the secretary of state, county clerk, or city clerk, a written declaration indicating his acceptance of said nomination within ten (10) days after the election at which he receives such nomination, and at the same time he shall pay to the officer with whom such declaration of acceptance is filed the fee above provided for filing a primary nominating petition for such office. No candidate receiving a nomination at a primary election as above provided shall have his name printed on the official ballot for the general election without complying with the provisions of this section.

Amd. Sec. 1, Ch. 133, L. 1923; Amd. Sec. 1, Ch. 125, L. 1927.

For text treatment of this subject see vol. 10 Cal. Jur. 61-64.

641. Form of petition for nomination. The petition for nomination required by the preceding section shall be substantially in the following form:

To (name and title of officer with whom petition is to be filed) and to the members of the party and the electors of the (State or counties of comprising the district or county or city, as the case may be) in the state of Montana;

I reside at and my post-office address is I am a candidate of the party for the nomination for the office of at the primary nominating election to be held in the (State of Montana or district, or county or city) on the day of, 19...., and if I am nominated as the candidate of the party for such office I will accept the nomination and will not withdraw, and if I am elected I will qualify as such officer.

If I am nominated and elected I will, during my term of office (here the candidate, in not exceeding one hundred words, may state any measure or principles he especially advocates, and the form in which he wishes it printed after his name on the nominating ballot, in not exceeding twelve words).

.....
Signature of Candidate for Nomination.

Every such petition shall be signed as above by the elector seeking such nomination.

Amd. Sec. 1, Ch. 133, L. 1923.

642. Percentage of electors required on petition.

Rep. Sec. 3, Ch. 133, L. 1923.

643. Qualification of petitioners.

Rep. Sec. 3, Ch. 133, L. 1923.

644. Time for filing petitions for nominations. All petitions for nomination under this act for offices to be filed by the state at large or by any district consisting of more than one county, and nominating peti-

tions for judges of district courts in districts consisting of a single county, shall be filed in the office of the secretary of state not less than forty days before the date of the primary nominating election; and for other offices to be voted for in only one county, or district or city, every such petition shall be filed with the county clerk or city clerk as the case may be, not less than thirty days before the date of the primary nominating election.

Amd. Sec. 2, Ch. 133, L. 1923.

For text treatment of this subject see vol. 10 Cal. Jur. 63.

645. Register of candidates. The secretary of state, county clerk and city clerk shall keep a book entitled "Register of Candidates of Nomination at the Primary Nominating Election," and shall enter thereon on different pages of the book for different political parties subject to the provisions of this law, the title of the office sought and the name and residence of each candidate for nomination at the primary election; the name of his political party; the date of receiving the petition for nomination signed by the candidate; the words he wishes printed after his name on the nominating ballot, if any; and such other information as may aid him in arranging his official ballot for said primary nominating election. Immediately after the canvass of votes cast at a primary nominating election is completed, the county clerk, secretary of state or city clerk, as the case may be, shall enter in his book marked "Register of Nominations," the date of such entry, the name of each candidate nominated, the office for which he is nominated, and the name of the party making the nomination.

Amd. Sec. 1, Ch. 133, L. 1923.

648. Arrangement and certification of names of candidates. Not more than forty days and not less than twenty-five days before the day fixed by law for the primary nominating election the secretary of state shall arrange, in the manner provided by this law, for the arrangement of the names and other information upon the ballots. all the names of and information concerning all the candidates for nomination contained in the valid petitions for nomination which have been filed with him in accordance with the provisions of this law, and he shall forthwith certify the same under the seal of the state, and file the same in his office, and make and transmit a duplicate thereof by registered letter to the county clerk of each county in the state, and he shall also post a duplicate thereof in a conspicuous place in his office and keep the same posted until after said primary nominating election has taken place. In case of emergency the secretary of state may transmit such duplicate by telegraph.

Amd. Sec. 1, Ch. 12, L. 1925.

649. Arrangement of ballots and notice. Not more than thirty days, and not less than twenty days before the day fixed by law for the primary nominating election, the county clerk of each county, or the city clerk of each city, as the case may be, subject to the provisions of this law, shall arrange in the manner provided by this law for the arrangement of the names and other information concerning all the candidates and parties

named in the valid petitions for nomination which have been filed with him and those which have been certified to him by the secretary of state, in accordance with the provisions of this law; and he shall forthwith certify the same under the official seal of his office, and file the same in his office, and make and post a duplicate thereof in a conspicuous place in his office, and keep the same posted until after the primary nominating election has taken place; and he shall forthwith proceed and cause to be printed, according to law, the colored sample ballots and the official ballots required by this law.

Amd. Sec. 2, Ch. 12, L. 1925.

*Amended Ch 67
L 1929*
651. Ballots, how arranged, printed and voted. At all primary elections there shall be a ballot made up of the several party tickets herein provided for, each of which shall be printed on a separate sheet of white paper, and all of which shall be the same size, and shall be securely fastened together at the top and folded, provided that there shall be as many separate tickets as there are parties entitled to participate in said primary election.

The names of all candidates shall be arranged alphabetically according to surnames, under the appropriate title of the respective officers, and under the proper party designation upon the party ticket, except as hereinafter provided. When three or more persons are candidates for nomination for the same office, it shall be the duty of the county clerk in each of the counties of the state to divide the ballot forms provided by the law for the county, into sets so as to provide a substantial rotation of the names of the respective candidates as follows: He shall divide the whole number of ballot forms for the county into sets equal in number to the greatest number of candidates for the nomination or election to any office, and he shall so arrange said sets that the names of the candidates shall, beginning with a form arranged in alphabetical order as provided herein, be rotated by removing one name from the top of the list for each nomination or office and placing said name or number at the bottom of the list for each successive set of ballot forms; provided, however, that no more than one of said sets shall be used in printing the ballots for use in any one precinct, and that all ballots furnished for use in any precinct shall be of one form and identical in every respect. If any elector write upon his ticket the name of any person who is a candidate for the same office upon some other ticket than that upon which his name is so written this ballot shall be counted for such person only as a candidate of the party upon whose ticket his name is written, and in no case shall be counted for such person as a candidate upon any other ticket. In case any person is nominated as provided in this act, upon more than one ticket, he shall within ten (10) days after such election file with the secretary of state, county clerk or city clerk, a written document indicating the party designation under which his name is to be printed on the official ballot for the general election, failing in which, his name shall be printed upon the party ticket for which his nominating petition shall have been first filed, and no candidate shall have his name printed on more than one ticket. The ballots with the indorsements shall be printed on white paper in substantially the forms of the Australian ballot, used in general

elections, except that the candidates of each party shall be printed on a separate ticket or sheet. After preparing his ballot the elector shall detach the same from the remaining tickets and fold it so that its face will be concealed and with official stamp thereon seen. The remaining tickets attached together shall be folded in like manner by the elector who shall thereupon, without leaving the polling place, vote the marked ballot forthwith, and deposit the remaining tickets in the separate ballot-box to be marked and designated as the blank ballot-box. Immediately after the canvass, the judges of election shall, without examination, destroy the tickets deposited in the blank ballot-box.

Amd. Sec. 1, Ch. 133, L. 1923; Amd. Sec. 1, Ch. 14, L. 1927.

652. Official and sample ballots—Preparation and number. There shall be printed and furnished for each election precinct a number of ballots equal to the number of voters registered in such voting precinct and entitled to vote at such primary nominating election.

If any political party shall desire sample ballots its political committee may order the same from the county clerk or city clerk who shall collect from such committee an amount sufficient to pay the costs of printing such sample ballots, and such sample ballots after being printed, shall, on the written order of the clerk, be delivered to the committee ordering the same, but no such sample ballot shall be printed except on the order of the county or city clerk. The sample ballots shall be duplicate impressions of the official ballots to be voted, but in no case shall they be white, nor shall said sample ballots have perforated stubs, nor shall they have the same margin either at the top or sides or bottom as the official ballots have, or nearer thereto than twelve points, and the names of the candidates on the tickets composing the same shall not be rotated as required for the official ballots, but shall be impressions of the tickets belonging to lot 1 of each party.

Amd. Sec. 1, Ch. 133, L. 1923.

662. County and city central committeemen, how elected. There shall be elected by each political party, subject to the provisions of this law, at said primary nominating election, a committeeman for each election precinct, who shall be a resident of such precinct. Any elector may be placed in nomination for committeeman of any precinct by a writing so stating, signed by such elector, and filed in the office of the county clerk within the time required in this act for the filing of petitions naming individuals as candidates for nomination at the regular biennial primary election. The names of the various candidates for precinct committeemen of each political party shall be printed on the ticket of the same in the same manner as other candidates and the voter shall express his choice among them in like manner as for such other candidates. The committeeman thus elected shall be the representative of his political party in and for such precinct in all ward or subdivision committees that may be formed. The committeemen elected in each precinct in each county shall constitute the county central committee of each of said respective political parties. Those committeemen who reside within the limits of any incorporated city or town shall constitute ex officio the city central committee of each of said respective political parties, and shall have the same power

and jurisdiction as to the business of their several parties in such city matters that the county committee has in county matters, save only the power to fill vacancies in said committee, which power is vested in the county central committee. Each committeeman shall hold such position for the term of two years from the date of the first meeting of said committee immediately following their election. In case of a vacancy happening on account of death, resignation, removal from the precinct, or otherwise, the remaining members of said county committee may select a committeeman to fill the vacancy and he shall be a resident of the precinct in which the vacancy occurred. Said county and city central committees shall have the power to make rules and regulations for the government of their respective political parties in each county and city, not inconsistent with any of the provisions of this law, and to elect the county members of the state central committee, and of the members of the congressional committee, and said committee shall have the same power to fill all vacancies and make rules in their jurisdiction that the county committees have to fill county vacancies and make rules. Said county and city central committees shall have the power to make nominations to fill vacancies occurring among the candidates of their respective parties nominated for city or county offices by the primary nominating election where such vacancy is caused by death or removal from the electoral district, or otherwise. Said committees shall meet and organize by electing a chairman and secretary within thirty days after the candidates of their respective political parties shall have been nominated. They may select managing or executive committees and authorize such sub-committees to exercise any and all powers conferred upon the county, city, state and congressional central committees respectively by this law.

Amd. Sec. 1, Ch. 98, L. 1927.

663. Selection of national committeeman and committeewoman. The state central committee of each political party in the state of Montana shall select one national committeeman and one national committeewoman. The chairman of the state central committee shall at once file with the national committee the names of the national committeeman and national committeewoman so selected, and it shall be the duty of the chairman of the delegation to the national convention of each political party to report to the national convention the names of the persons so selected to be the national committeeman and the national committeewoman of his political party for the state of Montana. Said committeeman and committeewoman shall represent said political party as members of the national committee of said party and shall be selected in each year in which a president and vice-president of the United States are elected, and such selection shall be made prior to the meeting of the national conventions of the respective political parties. The national committeeman and committeewoman shall hold office for a term of four years.

Amd. Sec. 1, Ch. 159, L. 1925.

670. General laws applicable to this enactment.

Cited in *Thompson v. Chapin*, 64 Mont. 376, 383, 209 Pac. 1060.

CHAPTER 53.

PRESIDENTIAL PREFERENCE PRIMARY.

671-676 inclusive. Relating to the holding of a presidential preference primary election.

Rep. Referendum Measure No. 27; L. 1925, p. 488.

673. Election of delegates to national convention and nomination of presidential electors, how made.

This section, referring to party candidates for president and vice-president, does not provide for an exclusive method of nominating presidential electors, so

as to exclude their nomination as independents. State ex rel. Wheeler v. Stewart, 71 Mont. 358, 230 Pac. 366.

675. Campaign books, how prepared and allotted.

Rep. Sec. 1, Ch. 139, L. 1923.

676. Space in campaign books, how allotted and paid for.

Rep. Sec. 1, Ch. 139, L. 1923.

CHAPTER 53A.

NOMINATION OF PRESIDENTIAL ELECTORS AND DELEGATES TO NATIONAL CONVENTIONS.

673.1. Political party defined. The term political party as used in this act shall include any party conducted for political purposes, which now has or hereafter shall perfect a national organization.

En. Sec. 1, Ch. 126, L. 1927.

673.2. Nomination of presidential electors and delegates to national conventions. All political parties in Montana shall hereafter nominate their presidential electors and elect their delegates to national conventions in the manner provided by this act. It shall be the duty of each political party to select in each county in the state in such manner as is now provided by law, or by the rules of the party in case the law does not so provide, a precinct committeeman for each election precinct, a county chairman in each county and a state chairman.

En. Sec. 2, Ch. 126, L. 1927.

673.3. Holding of county convention. In each year when a president of the United States is to be chosen a county convention shall be held by each political party on the second Tuesday in May in each county in the state, composed of the county precinct committeemen of the party. The chairman of the county central committee shall call said county convention and, not less than ten days nor more than two weeks before the date of the convention, shall publish said call in a newspaper published at the county seat and shall mail a copy of the call to each precinct committeeman. In the event there is no county central committee in any county, the state central committee of the political party having no county central committee in said county shall appoint a county central committee therein and said county central committee shall have the

same powers and duties as county central committee selected as now provided by law.

En. Sec. 3, Ch. 126, L. 1927.

673.4. Presiding officer—Seating of members. The county chairman of the party shall preside at the county convention. No person other than a duly elected or appointed precinct committeeman shall be entitled to sit in said convention or participate in its proceedings. No proxy shall be recognized unless held by an elector of the precinct of the committeeman executing the same. In case of the absence of any precinct committeeman and his duly appointed proxy, the convention may fill the vacancy by appointing some qualified elector of the party, resident in the precinct, to represent such precinct in the convention.

En. Sec. 4, Ch. 126, L. 1927.

673.5. Organization of convention—Election of delegates. Said county convention shall organize by the appointment of a secretary, who, with the chairman of the meeting, shall issue and sign certificates of election to the delegates and alternates elected by the convention. The convention shall elect delegates and alternate delegates to attend the state convention, in a number equal to the total number of state senators and representatives elected from said county to the legislative assembly.

En. Sec. 5, Ch. 126, L. 1927.

673.6. State convention, when held. On the third Tuesday in May the delegates (or alternate delegates in case any elected delegates cannot attend) shall hold a state convention at the seat of government for the purpose of electing delegates and alternates to the national convention of the party, and presidential electors.

En. Sec. 6, Ch. 126, L. 1927.

673.7. State convention, how conducted. Said state convention shall be conducted in accordance with the party rules, subject, however, to the following requirements:

The chairman of the state central committee shall call the state convention and shall publish the call at least once in a newspaper published at the seat of the government. Said call shall be published not less than ten (10) days nor more than two (2) weeks before the date of the convention and a copy of the call shall be mailed to the county chairman in each county. The chairman of the state central committee shall preside over the convention and, together with a secretary chosen by the convention, shall sign certificates of election, which shall be delivered as credentials to the several persons elected by the convention as delegates to the national convention of said party, and certificates of nomination for presidential electors for said party which shall be filed with the secretary of state. Only regularly elected delegates or alternates shall be entitled to sit in said convention or participate in its proceedings and no proxies shall be recognized by the convention. In case of the absence of a member or members of the delegation elected from any county the delegates present for said county shall be entitled to cast a number of votes

equal to the number of delegates elected to the convention from said county.

En. Sec. 7, Ch. 126, L. 1927.

673.8. Expenses—Mileage of delegates. The entire expense of conducting the county and state conventions herein provided for shall be defrayed by the several political parties, except that each elected delegate or alternate who shall attend the state convention and participate therein shall receive the sum of five (5c) cents per mile for each mile actually traveled by him in going to and returning from said convention, said mileage to be computed by the shortest practicable route, and to be paid out of the general funds of the county in the same manner as other election expenses.

En. Sec. 8, Ch. 126, L. 1927.

CHAPTER 54.

BALLOTS, PREPARATION AND FORM.

687. Number of ballots to be provided for each precinct. The county clerk must provide for each election precinct in the county ten more than an equal number of ballots as there are electors registered in the precinct. If there is no registry in the precinct, the county clerk must provide ballots equal to the number of electors who voted at the last preceding election in the precinct, unless in the judgment of the county clerk a greater number be needed, but in no case to exceed one and one-half times as many as the number of registered voters in the precinct. He must keep a record in his office, showing the exact number of ballots that are delivered to the judges of each precinct. In municipal elections it is the duty of the city clerk to provide ballots as specified in this section.

Amd. Sec. 1, Ch. 16, L. 1925.

CHAPTER 55.

CONDUCTING ELECTIONS; THE POLLS, VOTING AND CHALLENGES.

700. Manner of voting.

Sections 700-703 were cited in Goodell v. Judith Basin County et al., 70 Mont. 222, 233, 224 Pac. 1110.

For text treatment of this subject see vol. 10 Cal. Jur. 94, 95.

703. Record that person has voted, how kept.

Under this section, the act of voting is not completed until the ballot is deposited in the ballot-box. Goodell v.

Judith Basin County et al., 70 Mont. 222, 224 Pac. 1110.

704. Marking precinct registry book when elector has voted—Procedure.

Applied with section 576 holding that the failure of election judges to require electors to sign the registry book before voting at a primary election, was the fault of the judges and not of the

electors, and that therefore such votes were legal and properly counted. Thompson v. Chapin, 64 Mont. 376, 209 Pac. 1060.

CHAPTER 56.

VOTING BY ABSENT ELECTORS.

715. Voting by elector when absent from place of residence.

The Absent Voters Law is a valid enactment and not open to the objection that in permitting a ballot to be delivered to the election officers by mail, it violates section 2 of article IX of the state constitution, the contention that the section, by providing that an elector shall have resided in the state one year immediately preceding the election "at

which he offers to vote," impliedly requires his personal presence at the polls, not being tenable. *Goodell v. Judith Basin County et al*, 70 Mont. 222, 224 Pac. 1110.

Absent voters laws, notes, 14 A. L. R. 1259; 19 A. L. R. 308; 35 A. L. R. 819.

717. Form of Application. Application for such ballots shall be made on a blank to be furnished by the county clerk of the county of which the applicant is an elector, or the city or town clerk, if it be municipal, general, special or primary election, and shall be in substantially the following form:

I,, a duly qualified elector of the precinct, in the county of and state of Montana, and am to the best of my knowledge and belief entitled to vote in such precinct in the next election, expecting to be absent from the said county on the day for holding such election, hereby make application for an official ballot to be voted by me at the said election.

.....
Postoffice address to which ballot is to be mailed

State of }
County of } ss.

On this day of, personally appeared before me, who being first duly sworn, deposes and says that he is the person who signed the foregoing application, that he has read and knows contents of same and knows to his own knowledge the matters and things therein stated are true.

.....
.....

This application must be subscribed by the applicant and sworn to before some officer authorized to administer oaths, and the application shall not be deemed complete without his affidavit.

Amd. Sec. 1, Ch. 151, L. 1923.

718. Acceptance of application—Delivery of ballot. The voter making such application shall forward by mail or deliver in person the same to the county clerk of the county in which he is registered and it shall be the duty of the said county clerk to look up the applicant's registration card and compare the signature on the application for absent voter's ballot and the registration card and if convinced the person making the application for absent voter's ballot and the person who signed the original registration card is one and the same person, he shall accept the same in good faith and deliver the ballot as provided in section 719.

Amd. Sec. 2, Ch. 151, L. 1923.

This section of the Absent Voters Law requires the application for an absent voter's ballot to be accompanied by the affidavits of two registered electors of the precinct in which the absent voter resides identifying the applicant. In an election absent voters' ballots were counted although the application in each

instance was accompanied by the affidavit of only one resident elector of his precinct and by an affidavit of an elector residing in another precinct. Held, that it appearing that each of the voters was qualified and acted without fraudulent intent, the votes were properly counted. *Goodell v. Judith Basin County et al.*, 70 Mont. 222, 224 Pac. 1110.

721. Marking and swearing to ballot by elector. Such voter shall make and subscribe the said affidavit before an officer authorized by law to administer oaths, and who has an official seal, and may do so at any place in the state of Montana, or in any other state or territory of the United States, before any officer authorized by the laws of this state to take acknowledgments of instruments without the state, and such voter shall thereupon, in the presence of such officer and of no other person, mark such ballot or ballots, but in such manner that such officer cannot see the vote, and such ballot or ballots thereupon, in the presence of such officer, shall be folded by such voter so that each ballot shall be separate, and so as to conceal the vote, and shall be, in the presence of such officer, placed in such envelope securely sealed with mucilage and in addition thereto sealing wax in not less than two places thereon, the sealing wax to contain the impression of the official seal of the officer administering the oath. Said officer shall thereupon append his signature and official title and affix his seal at the end of said jurat and affidavit. Said envelope shall be mailed by such absent voter, postage prepaid, or delivered to the county or city or town clerk, as the case may be.

Amd. Sec. 3, Ch. 151, L. 1923.**722. Disposition of marked ballot upon receipt by clerk.**

Sections 722, 723 were cited in *Goodell v. Judith Basin County et al.*, 70 Mont. 222, 240, 224 Pac. 1110.

727. Envelopes containing ballots—Deposit in box and rejection of ballot.

Under the rule that failure of an election officer to discharge his duty properly does not disfranchise an elector who in casting his ballot complied with the law, omission of the county clerk, in transmitting absent voters' ballots to the judges of election, to inclose the applications for such ballots to enable comparison of the signatures on the ap-

plications and the envelopes containing the ballots, was not a reason for rejecting the ballots, and, after election, the requirement of this section, making it the duty of the judges of election to compare the signatures, will be deemed directory only. *Goodell v. Judith Basin County et al.*, 70 Mont. 222, 224 Pac. 1110.

CHAPTER 57.**ELECTION RETURNS.****777. What ballots must be counted.**

Cited in *Goodell v. Judith Basin County et al.*, 70 Mont. 222, 242, 224 Pac. 1110.

For text treatment of this subject see vol. 10 Cal. Jur. 78.

CHAPTER 65.

THE STATE BOARD OF EDUCATION—ITS COMPOSITION, POWERS AND DUTIES.

831. Appointment and term of members of state board of education. The governor shall appoint, by and with the advice and consent of the senate, the remaining eight members of the board. Such appointments shall be made in the following manner:—The appointees shall be equally divided between the first and second congressional districts of the state of Montana and shall be so selected that not more than four of such members are affiliated with the same political party or organization. Upon the expiration of the term of any present member or members of the board, appointment shall be made in such manner as to carry into effect the foregoing provisions of this act.

The terms of office for members so appointed upon the board shall be four years, and until their successors are appointed and qualified; provided that any appointment to fill a vacancy occurring before the expiration of the term of the incumbent shall be filled for the remainder of such term only, and by a person a resident of the congressional district and a member of the political party or organization required to equalize the appointed members of the board, between territory and political party or organization, as in the case of a full term appointment.

Amd. Sec. 1, Ch. 53, L. 1927.

For text treatment of this subject see vol. 23 Cal. Jur. 81.

836. Par. 7. Relating to state certificates.

Rep. Sec. 1, Ch. 131, L. 1923.

837-840 inclusive. Relating to teachers' certificates.

Rep. Sec. 2, Ch. 131, L. 1923.

CHAPTER 66.

CONTROL OF STATE EDUCATIONAL INSTITUTIONS.

841. General control of state institutions. The general control and supervision of the state university, state normal college, college of agriculture and mechanic arts of Montana, the eastern state normal school, state orphans' home, state industrial school, and the state vocational school for girls are vested in the state board of education.

Amd. Sec. 4, Ch. 160, L. 1925.

For text treatment of this subject see vol. 23 Cal. Jur. 82.

850. Control of expenditures by the state board of examiners.

Cited in State ex rel. Jones v. Erickson, 75 Mont. 429, 457, 244 Pac. 287.

CHAPTER 67.

THE UNIVERSITY OF MONTANA.

852. Institutions comprising University of Montana. The state university at Missoula, the college of agriculture and mechanic arts at Bozeman, the school of mines at Butte, the normal college at Dillon, the eastern Montana state normal school at Billings and the northern agricultural and manual training school at Fort Assiniboine, and such departments of said institutions as may hereafter be organized, shall constitute the university of Montana, under the name and style of university of Montana.

Amd. Sec. 1, Ch. 6, L. 1927.

Cited in State ex rel. Jones v. Erickson, 75 Mont. 429, 441, 244 Pac. 287.

854. Diplomas. The state board of education shall have power, upon the recommendation of the faculty of any of the said component institutions, to grant diplomas and to confer the customary degrees on the graduates of all departments of said University of Montana, and such degrees and diplomas shall run from the University of Montana, specifying substantially that the graduate has completed the course of study of the University of Montana at the state university in Missoula, at the college of agriculture and mechanic arts in Bozeman, at the school of mines in Butte, at the state normal college in Dillon, at the eastern Montana state normal school at Billings, or at the northern Montana agricultural and manual training school at Fort Assiniboine, as the case may be.

Amd. Sec. 2, Ch. 6, L. 1927.

860. Refunding fare to students. The state board of education, subject to such rules and regulations as said board may hereafter adopt thereon, is authorized to provide for the refund of the amount of necessary fare, less fifteen (\$15) dollars, paid by any student in regular attendance at any of the institutions of the University of Montana for traveling, once each year, from his place of residence, in the state of Montana by the most direct route of travel, to the said institution and return.

Amd. Sec. 1, Ch. 49, L. 1923; Amd. Cited in Mills v. Stewart, 76 Mont. Sec. 1, Ch. 41, L. 1925. 429, 443, 247 Pac. 332.

CHAPTER 70.

AGRICULTURAL EXPERIMENT STATIONS.

889. Establishment and objects.

Cited in State ex rel. Jones v. Erickson, 75 Mont. 429, 447, 244 Pac. 287.

891. Agricultural experiment station.

Cited in State ex rel. Jones v. Erickson, 75 Mont. 429, 447, 244 Pac. 287.

893.1. Acceptance of congressional act. The state of Montana hereby assents to the provisions of an act of congress entitled, "An act to authorize the more complete endowment of the Agricultural Experiment Stations and for other purposes," approved February 24, 1925, and hereby con-

sents to receive the benefits thereof in the manner and form and for the purposes in said act intended and provided.

En. Sec. 1, Ch. 21, L. 1927.

893.2. Who may receive funds. The president of the state college of agriculture and mechanic arts of the state of Montana is hereby authorized and empowered to receive such moneys as provided in this act for the more complete endowment of the agricultural experiment station of the state of Montana, and shall expend such moneys and make such reports to the secretary of agriculture as are in accordance with the provisions set forth in said act of congress.

En. Sec. 2, Ch. 21, L. 1927.

895. Acceptance of certain acts of congress.

Cited in *State ex rel. Jones v. Erickson*, 75 Mont. 429, 447, 244 Pac. 287.

CHAPTER 72.

THE STATE ENTOMOLOGIST.

916. Expenses. The state entomologist shall receive no compensation for his services other than what he may receive from the college of agriculture and mechanic arts and experiment station but such office or laboratory expenses and such salaries of necessary assistants, together with such traveling expenses as result from the work contemplated under this act, not to exceed such sums as the legislature from time to time may appropriate, shall be paid, and upon certification of the secretary of the executive board of the college of agriculture and mechanic arts and director of the agricultural experiment station, the state auditor is authorized to issue warrants to cover the same. The actual traveling expenses of the state entomologist and the actual traveling expenses and salary of his assistant, which shall result from the work contemplated under section 4504 of the Revised Codes of Montana of 1921, as amended by chapter 25 of the Laws of the Eighteenth Legislative Assembly of 1923 shall be paid by the county or counties wherein such work is contemplated or carried on, and upon presentation and allowance of a sworn claim against such county or counties, warrants in payment thereof shall be drawn upon the general fund of such county or counties. The board of county commissioners shall annually determine the amount of such warrants drawn upon the general fund for the purposes of this act, and shall include such amount in the tax levied the succeeding year for the purpose of insect pest extermination and reimburse the general fund for money so paid out on such warrants as is provided in section 4504 of the Revised Codes of Montana of 1921, as amended by chapter 25 of the Laws of the Eighteenth Legislative Assembly of 1923.

Amd. Sec. 1, Ch. 114, L. 1925.

CHAPTER 73.

THE NORTHERN MONTANA AGRICULTURAL AND MANUAL TRAINING SCHOOL.

917. Declaration regarding northern Montana agricultural and manual training school. Whereas the state of Montana has heretofore purchased from the United States the lands and buildings at Fort Assiniboine, Montana, upon certain conditions, which conditions have been partially complied with and discharged; and,

Whereas, there is a large amount of property so purchased by the state of Montana that is not in use or necessary for the proper operation of the agricultural experiment station now situated at said Fort Assiniboine; and said property is deteriorating in value and should be salvaged and the proceeds therefrom placed in a fund to be used for the purposes contemplated by the act of congress, authorizing the sale of said property to the state of Montana; the northern Montana agricultural and manual training school which, pursuant to the provisions of chapter 67, Laws 1913, was established at Fort Assiniboine, Montana. It is hereby declared to be a body politic and corporate with power to sue and be sued, and receive property by gift, purchase, devise or bequest. It has for its object instruction and education in the English language, literature, and mathematics, mechanic arts, agricultural chemistry, animal and vegetable anatomy and physiology, and veterinary art, entomology, geology, and such other natural sciences as may be prescribed by the state board of education, political, rural and household economy, agriculture, horticulture, moral philosophy, history, bookkeeping, and especially the application of science and the mechanical arts to practical agriculture in the field, and irrigation and use of water for agricultural purposes; also all that relates to an efficient modern manual training school.

Amd. Sec. 1, Ch. 66, L. 1925.

918. Control, where vested. The general control and management of the northern Montana agricultural and manual training school is vested in the state board of education and the local executive board hereinafter provided for.

Amd. Sec. 2, Ch. 66, L. 1925; Amd. Sec. 1, Ch. 82, L. 1927.

921. Executive board—Location of departments. The governor shall, within thirty days after the passage and approval of this act, designate and appoint two persons, residents of Hill county, Montana, whose tenure of office shall be fixed by the state board of education, who together with the chancellor of the University of Montana shall constitute an executive board. The chancellor of the University to serve until such time as a faculty be selected for said school, after which the president of the school shall serve on said board in the place of the chancellor. Said board shall have the immediate direction and control of the affairs of said school subject only to the general supervision and control of the state board of education.

Said board shall take possession and control of said school at Fort Assiniboine, Montana, except such parts thereof as are under the control

of and being used by the agricultural experiment station. Said board is authorized with the consent and approval of the state board of examiners to sell and dispose of any such property at public or private sale as it may deem advisable to prevent loss through deterioration or other cause. After deducting the necessary expenses of such sale, the proceeds together with any moneys received for said school from any other source shall be deposited with the state treasurer and by him credited to the fund known as the northern Montana agricultural and manual training school fund. Said fund shall be used for the support of said school.

Any academic department or departments of said school which do not of necessity or for reasonable convenience need to be located on the premises or grounds of said school at the Fort Assiniboine Military Reservation, may be located by the executive board and state board of education within or adjacent to the said city of Havre, Hill county, Montana.

Amd. Sec. 3, Ch. 66, L. 1925; Amd. Sec. 2, Ch. 82, L. 1927.

921.1. Board to make study and report. The executive board shall, during 1925 and 1926 make a study of the needs of northern Montana for the type of school contemplated by section 917 as amended; investigate the subjects of instruction which should be offered by such a school; recommend plans for the number and qualifications of its faculty; formulate a method of procedure for the transfer of the activities of the north Montana substation together with all equipment and property now being used at said substation, to the northern Montana agricultural and manual training school, with a view to the absorption by said school of the activities of said substation and with the further view of having said school take over and perform the experimental functions and farming operations of said agricultural substation under the supervision of the faculty of said school to the end that the labor of pupils in the production of farm products may provide food supplies for the dormitories of said school, and said school be made, as near as possible, self-supporting.

The executive committee shall investigate the possibilities of conducting and carrying on this type of school within the amount of money now being appropriated by the state of Montana for the support of the substation and formulate plans for the transfer of said appropriations from said substation to the support of the school.

The said executive committee shall prepare a full and complete report, in writing, embodying its findings and recommendations and submit the same to the twentieth legislative assembly of the state of Montana for appropriate action.

The members of said executive board shall serve for a period of two years from the date of their appointment, unless sooner removed by the governor, with or without cause.

En. Sec. 4, Ch. 66, L. 1925.

CHAPTER 74A.

THE EASTERN MONTANA STATE NORMAL SCHOOL.

930.1. Establishment of eastern Montana state normal school. That there be, and is hereby established, subject to the approval of the state board of education, a state normal school to be located within the state of Montana, east of the 110th meridian, at a place to be designated by the state board of education as herein provided, the said school to be known as the eastern Montana state normal school.

En. Sec. 1, Ch. 160, L. 1925.

930.2. Objects and purposes. The objects and purposes of said normal school shall be primarily for the instruction and training of teachers for the public schools of the state of Montana.

En. Sec. 2, Ch. 160, L. 1925.

930.3. Management. The control and management of the said eastern Montana state normal school shall be vested in the state board of education and in local executive board, which shall be appointed and constituted as provided by section 842 of the Revised Codes of Montana, 1921.

En. Sec. 3, Ch. 160, L. 1925.

930.4. Acceptance of gifts and donations. The state board of education is hereby authorized to accept, for and on behalf of said eastern Montana state normal school any donations of lands and any other gifts, grants or donations for the use and benefit of said eastern Montana state normal school.

En. Sec. 5, Ch. 160, L. 1925.

930.5. Location. The location and site for the eastern Montana state normal school shall be selected by the state board of education, or at its option, by a normal school commission to consist of three members to be appointed by the state board of education, and if by such commission, it shall be composed of heads of educational institutions outside of the state of Montana and the expenses of said commission shall be borne by the city or town where said normal school is located.

En. Sec. 6, Ch. 160, L. 1925.

930.6. Selection of site. The state board of education, at its regular quarterly meeting in July, 1926, shall decide whether the designation of the said normal school shall be made by the state board of education or by the normal school commission. If by such commission, the state board of education shall at said meeting, select the normal school commission. The state board of education or the said commission shall designate such location of said normal school and select a suitable site by the first day of September, 1926. The city or town decided upon as the location for the said eastern Montana state normal school shall within six months deed to the state of Montana, free of all costs, the site selected by said commission; provided, that any action taken by said commission above provided for, shall be subject to review by the state board of education

with the right in said board to accept or reject any action of said commission either in part or in toto.

En. Sec. 7, Ch. 160, L. 1925.

CHAPTER 75.

THE PUBLIC SCHOOLS—SUPERINTENDENT OF PUBLIC INSTRUCTION.

943. County superintendents.

Cited in *State ex rel. School Dist. v. Trumper*, 69 Mont. 468, 477, 222 Pac. 1064.

944. **Examinations.** He shall, with the co-operation of the state board of educational examiners, prepare all questions to be used in the examinations of applicants for teachers' certificates, and prescribe the rules and regulations for conducting all such examinations.

Amd. Sec. 3, Ch. 131, L. 1923.

947. Temporary state certificates.

Rep. Sec. 4, Ch. 131, L. 1923.

CHAPTER 76.

COUNTY SUPERINTENDENT OF SCHOOLS.

955. General powers.

Cited in *State ex rel. School Dist. v. Trumper*, 69 Mont. 468, 476, 222 Pac. 1064. For text treatment of this subject see vol. 23 Cal. Jur. 85, 86.

956. Duties of county superintendent, as to state superintendent.

Cited in *State ex rel. School Dist. v. Trumper*, 69 Mont. 468, 476, 222 Pac. 1064.

964. **Apportionment of school moneys—Warrants.** The county superintendent shall apportion all school moneys to the school districts in accordance with the provisions of this title quarterly, and he may make apportionments at such other times as may be required or deemed necessary for the convenience of school officers. He shall certify to the several district clerks and county treasurer the amount so apportioned to the several districts, and the trustees shall draw their warrants on the county treasurer in favor of persons entitled to receive the same. Such warrants shall show for what purpose the money is required, and no such warrant shall be drawn unless there is money in the treasury to the credit of such district; provided, that school trustees shall have the authority to issue warrants in anticipation of school moneys which have been levied, but not collected, for the payment of current expenses of schools, but such warrants shall not be drawn in any amount in excess of the sum already levied; and provided, that where the electors of any school district have at a special election held between January 1, 1925, and July 1, 1925, approved a special levy in excess of ten mills for the purpose of covering necessary expenses in maintaining school for the remainder of the current school year of 1924 and 1925, and the result of such election has been certified to the board of county commissioners as provided for

in section 1222, Revised Codes, warrants may be issued in anticipation of its collection which warrants shall be registered and paid out of such funds when collected.

Amd. Sec. 1, Ch. 82, L. 1925.

Cited in *State v. McGraw*, 74 Mont. 152, 161, 240 Pac. 812.

966. Controversies.

In view of this section, providing for appeal to the county superintendent of schools from the decision of a school board and for an appeal to the state superintendent of schools from the decision of the county superintendent, a court will not assume jurisdiction of a controversy arising out of the determination by a school board of the question whether a pupil was or was not a resident of the particular district, until the remedy thus provided has been exhausted, unless the board has acted without or in excess of its jurisdiction. *Peterson v. School Board et al*, 73 Mont. 442, 236 Pac. 670.

In the absence of express provision in this section, as to who may appeal from the decision of a county superintendent of schools, any person beneficially interested may appeal, and that a taxpayer or a member of the board of school trustees of the district respecting which the decision was made is an interested party. *State ex rel. School Dist. v. Trumper*, 69 Mont. 468, 222 Pac. 1064.

Cited in *State ex rel. Robinson v. Desonia et al*, 67 Mont. 201, 205, 215 Pac. 220.

971. Copies of census, to whom furnished. It shall be the duty of the county superintendent of schools to transmit within thirty days after he receives the school census from the district clerk, the duplicate copy of the census furnished by the clerk showing the name, sex, age, and the date of birth of each child under twenty-one years of age residing in the county, together with the names of the parents or guardians of such children, to the commissioner of the bureau of labor and industry. He shall also transmit to the superintendent of public instruction in the year 1927 a duplicate of his alphabetical card index of the school census on uniform blanks provided by the superintendent of public instruction, and every year thereafter cards for all new names shall be forwarded for insertion in the state file of the superintendent of public instruction, together with a list of eliminations of names from previous years. No county superintendent shall be paid his salary for the last two months of his official year until he presents to the county commissioners receipts from the commissioner of the bureau of labor and industry and from the superintendent of public instruction for such annual census reports and index of census list.

Amd. Sec. 3, Ch. 118, L. 1927.

971.1. Checking card lists. The superintendent of public instruction shall check for duplications the card indexes as submitted by the county superintendents. If duplications between counties are found, such duplications shall be reported by the superintendent of public instruction to the county superintendents of the counties in which the names are listed with instructions to the county superintendents to ascertain the actual place of residence of such families and to report findings. Failure of any county superintendent to report within fifteen days shall constitute authority for the superintendent of public instruction to remove the names in question from the list of that county.

En. Sec. 4, Ch. 118, L. 1927.

974. Duty to keep office open. The county superintendent of schools shall keep his office open every day when he is not engaged in the supervision of schools except holidays; provided that when he has a deputy or clerk, his office shall be kept open every day in month except holidays.

Amd. Sec. 1, Ch. 97, L. 1925.

CHAPTER 78.

SCHOOL TRUSTEES.

989. Conduct of election.

Cited in *Jersey et al. v. Peacock et al.*,
70 Mont. 46, 48, 223 Pac. 903.

For text treatment of this subject see
vol. 23 Cal. Jur. 89.

997. Term of office—Vacancy—Oath of trustees.

Cited in *Jersey et al. v. Peacock et al.*, 70 Mont. 46, 47, 223 Pac. 903.

1000. Vacancy in office of clerk.

Cited in *O'Brien v. School District No. 1*, 68 Mont. 432, 435, 219 Pac. 1113.

1001. Rearrangement of terms to prevent the election of a majority of the trustees.

In a school district of the third class the members of the board of trustees had been holding over for many years for failure to hold elections to choose their successors. An election was called and the board instead of pursuing the method of procedure under such circumstances prescribed by this section, i. e., selecting by lot one of its members to hold over for one year and one for two

years and providing for the election of the third for the term of three years, furnished ballots providing for the election of three trustees for terms of one, two and three years respectively. Held, that since there was only one trustee to be elected, the ballots furnished were so misleading as to render the election void. *Jersey et al. v. Peacock et al.*, 70 Mont. 46, 223 Pac. 903.

1005. Organization.

Cited in *State v. McGraw*, 74 Mont. 152, 156, 240 Pac. 812; *O'Brien v. School*

District No. 1, 68 Mont. 432, 435, 219 Pac. 1113.

1006. Meetings.

Cited in *O'Brien v. School District No. 1*, 68 Mont. 432, 434, 219 Pac. 1113.

Necessity, sufficiency and effect of minutes or record of school board, note, 12 A. L. R. 235.

1010. Transportation of pupils, etc. That the trustees of any school district of the state of Montana, when they shall deem it for the best interest of all pupils residing in such district, may close their school and send pupils of the district to another district and for such purpose are hereby empowered to expend any moneys belonging to their district for the purpose of paying for the transportation of pupils from their district to such other district or districts and for the purpose of paying their tuition. Whenever the trustees of any school district in the state of Montana deem it for the best interest of such district and the pupils residing therein they may expend any moneys belonging to their district for the purpose of paying for the transportation of pupils from their homes to the public school or schools maintained in such district; provided, however, that in the letting of the contract for the transpor-

tation of more than five pupils on a single transportation route, the trustees of school districts shall advertise for bids for transportation of such pupils in one issue of the county paper having the largest circulation in such district at least fifteen days prior to the letting of contract, and in the event that there is no newspaper published in the county, then three notices calling for bids shall be posted in three separate and conspicuous places in the district and provided that the contract for such transportation shall be let to the lowest responsible bidder and suitable bond be furnished by contractor, and provided that the trustees of any district shall not, except where there is rail transportation or where it is necessary to transport pupils for special instruction from school to school, be allowed to expend any of the district's money for transportation of pupils who live nearer than two miles from the limits of an incorporated city in which the child attends school or nearer than two and a half miles from the school the child attends, unless any child resides on an established consolidated route, provided, however, that this limitation as to mileage shall not apply to districts of the first or second class. When they deem it for the best interest of such district and the pupils residing therein, that any of such pupils should be sent to a school in their own or some other district, they must expend any moneys belonging to their district for the purpose of either paying for the transportation of such pupils from their homes to the public school or schools of such district or for their board, rent, or tuition while actually attending such schools. Provided that if there are five pupils or less, then the county superintendent of schools and trustees shall determine before any contracts are entered upon, whether such provision of board, rent, transportation or tuition is justified by the circumstances and also what is a reasonable charge for board, rent, transportation or tuition in every case where such measures have been adopted. If, in the judgment of the county superintendent and trustees of said districts, there is any evidence of fraud in securing an allowance for board, transportation, house rent or tuition by reason of the applicant's having purposely changed his residence or otherwise having contrived to secure assistance, no district funds shall be allowed for any of the purposes above enumerated.

When a district is relieved of the necessity of supporting any school by the fact that all or a part of the children residing in the district are being provided with schooling in another district, it shall be the duty of the trustees in the district holding no school to assist in the support of the school which the children of their district are attending, in proportion to the relation the number of children from their district attending school in another district bears to the total number of children enrolled in the school in the other district. No district shall be entitled to share in the county apportionment if trustees refuse to comply with the above requirement when they are thus relieved of the necessity of providing any school.

Amd. Sec. 1, Ch. 70, L. 1923; Amd. Cited in *State ex rel. Robinson v. Desonia et al.*, 67 Mont. 201, 204, 215 Pac. 220.
Sec. 1, Ch. 76, L. 1925; Amd. Sec. 1, Ch. 77, L. 1927.

1010.1. Appeal to state board of education. If any person shall be dissatisfied with any finding or determination of either the board of trustees or county superintendent of schools under the provisions of this

chapter relating to transportation, rent, tuition or board, such person may appeal from such finding or determination by written petition to the state board of education.

En. Sec. 2, Ch. 77, L. 1927.

1010.2. Effect of act. Nothing in this act shall be construed as repealing, abrogating or modifying section 1044 of the Revised Codes of Montana, 1921, as amended by chapter 178 of the Session Laws of the Nineteenth Legislative Assembly of 1925.

En. Sec. 3, Ch. 77, L. 1927.

1015. General powers of school boards. Every school board unless otherwise specially provided by law shall have power and it shall be its duty:

1. To prescribe and enforce rules not inconsistent with law, or those prescribed by the superintendent of public instruction for their own government of schools under their supervision.

2. To employ and discharge teachers, mechanics, or laborers, and to fix and order paid their wages; provided, that no teacher shall be employed except under resolution agreed to by the majority of the board of trustees at a special or regular meeting; not unless such teacher be the holder of a legal teacher's certificate in full force and effect. All contracts of employment of teachers, authorized by proper resolution of a board of trustees, shall be in writing and executed in duplicate by the chairman and clerk of the board, for the district and by the teacher.

3. To determine the rate of tuition of nonresident pupils.

4. To fix the compensation of the clerk.

5. To enforce the rules and regulations of the superintendent of public instruction for the government of schools, pupils, and teachers and to enforce the course of study.

6. To provide for school furniture and for everything needed in the schoolhouse or for the use of the school board.

7. To rent, repair and insure schoolhouses.

8. To purchase, acquire, sell and dispose of plots or parcels of land to be used as sites for schoolhouses, school dormitories and other school buildings, and for other purposes in connection with the schools in the district; to build, purchase or otherwise acquire schoolhouses, school dormitories and other buildings necessary in the operation of school of the district, and to sell and dispose of the same; provided, that they shall not build or remove schoolhouses or dormitories, nor purchase, sell or locate school sites unless directed so to do by a majority of the electors of the district voting at an election held in the district for that purpose, and such election shall be conducted and votes canvassed in the same manner as at the annual election of school officers, and notice thereof shall be given by the clerk by posting three notices in three public places in the district at least ten days prior to such election, which notices shall specify the time, place and purpose of such election.

9. To hold in trust for their district all real or personal property for the benefit of the school thereof.

10. To suspend or expel pupils from school who refuse to obey the rules thereof, and to exclude from school, children under six years of age where the interest of the school requires such exclusion.

11. To provide clothing and medical aid for indigent children when it shall be made to appear that such aid is needed; and to employ a physician to make an examination into the sanitary conditions of the school and the general health conditions of each pupil, and to make a full detailed report to the board of trustees. The clerk of the district shall furnish immediately to each parent or guardian a copy of such portion of the above mentioned report as pertains to his child or ward.

12. To require pupils to be furnished with suitable books as a condition of membership in school.

13. To exclude from school and school libraries all books, tracts, papers and other publications of immoral and pernicious nature.

14. To require teachers to conform to the law.

15. To make an annual report, as required by law, to the county superintendent on or before the first day of August each year, in the manner and form and on the blanks prescribed and furnished by the superintendent of public instruction.

16. To make a report directly to the superintendent of public instruction whenever instructed by him to do so.

17. To determine what branches, if any, in addition to those required by law, shall be taught in any school in the district, subject to the approval of the county superintendent, in districts of the third class.

18. To visit every school in their district at least once in each term and to examine carefully into its management, conditions and needs. This clause applies to each of the trustees.

19. To provide separate privies or outhouses for the use of the sexes at all schoolhouses, where the same do not exist, and to see that the same are kept in good repair, and in clean condition. Such privies or outhouses must be located and built in such manner as to secure privacy. In all cases where there is no fence dividing the playgrounds of the sexes, the privies or outhouses herein named shall be separate and distinct buildings, and situated at least twenty feet apart, and to require that all teachers and janitors use due care in keeping all toilets in good repair and in clean condition and free from obscenity; provided that any trustee or trustees, teacher, janitor, or janitors, failing to comply with the provisions of this act, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not exceeding one hundred dollars, or imprisoned in the county jail not exceeding ninety days, or both such fine and imprisonment in the discretion of the court.

20. To allow pupils residing in other districts to attend school in the district of which they have charge, if in their judgment there is sufficient room.

21. To procure by purchase or donation, and to cause to be displayed daily in suitable weather, an American flag, with accompanying necessary fixtures, for each and every schoolhouse in their respective districts. Said flags shall be of dimensions not less than four by six feet, and shall be made from durable material. The school trustees are hereby authorized and empowered to use such portion of the school funds as

remain in their hands, and which is not otherwise appropriated, for the purchase and erection of fixtures.

22. To close a school at their discretion during the annual session of the state teachers' association, and to allow teachers to attend the same without loss of salary.

Amd. Sec. 1, Ch. 122, L. 1923.

In the exercise of the power conferred upon school trustees by this section, to admit nonresident pupils and to fix the amount of tuition to be charged them, the board acts in a quasi-judicial capacity, and with the proper exercise of its discretion and judgment in that regard the courts will not interfere. *Peterson v. School Board et al*, 73 Mont. 442, 236 Pac. 670.

Cited in *O'Brien v. School District No. 1*, 68 Mont. 432, 434, 219 Pac. 1113; *State ex rel. Hessler v. District Court*, 64 Mont. 296, 300, 209 Pac. 1052.

For text treatment of this subject see vol. 23 Cal. Jur. 91 et seq.

Power of school officers to provide free text-books and other school supplies for individual use of pupils, note, 17 A. L. R. 299.

Validity of regulation by school authorities as to clothes of pupils, notes, 18 A. L. R. 649; 30 A. L. R. 1216.

Regulations as to school fraternities, note, 27 A. L. R. 1074.

Power of school authorities to employ physicians, nurses, oculists and dentists, note, 12 A. L. R. 922.

1015.1. Endowment fund—Acceptance by schools. All school districts and boards of trustees thereof on behalf of such districts are hereby authorized and empowered to accept gifts, legacies and devises, subject to the conditions imposed by the deed of the donor, or will of the testator, or without any conditions imposed. Any school district in the state may, by resolution of the board of trustees of such school district, establish a special fund to be known as "Endowment Fund."

En. Sec. 1, Ch. 4, L. 1923.

1015.2. Endowment fund defined. The "endowment fund" shall consist of all donations by gift, devise, or bequest, not otherwise specified by the donor, devisor, or testator, in the deed of gift, or devise of any will or testament.

En. Sec. 2, Ch. 4, L. 1923.

1015.3. Investment of endowment fund—Disposal on abandonment. The endowment fund, when established, shall be kept sacred to the children of the district, and shall be invested in such securities as will guard the same from loss, and only the income therefrom may be appropriated for any purpose; the income from the fund shall be added to the principal and re-invested, until the fund shall have reached the total sum of fifty thousand (\$50,000) dollars in districts of the first class, the sum of twenty thousand (\$20,000) dollars in districts of the second class, and the sum of ten thousand (\$10,000) dollars in districts of the third class; when the said fund in any district shall have reached the said sum according to its class, the income from the fund may be appropriated for school purposes in the district, or may be added to the principal fund and re-invested the same as the principal.

Whenever any school district has been abandoned, and the territory comprising the same has been attached to a contiguous district, the endowment fund of such abandoned district shall be transferred and placed in the endowment fund in the district to which such territory is attached.

En. Sec. 3, Ch. 4, L. 1923.

1015.4. Custody and investment of endowment fund. The county treasurer shall be custodian of the endowment funds of school districts, and shall, with the consent and approval of the board of trustees of such district, invest the same in school district bonds of the district, or in bonds of other school districts within the state, when possible to do so, and when such funds cannot be invested in such school district bonds, temporary investments of small amounts of such funds may be made in the securities of national or state banks, and the bonds of such banks given to counties, for the protection of county funds, shall be held liable for the payment of any such temporary investment of such endowment fund. No portion of any such fund shall be loaned to the school district to which the same shall belong, nor shall any such fund be invested in the warrants of such district.

En. Sec. 4, Ch. 4, L. 1923.

1015.5. County treasurer—Duties—Liability—Reports. The county treasurer shall keep the endowment fund of each school district separate and distinct from all other funds of the district, and shall keep a separate account of same, and shall keep the securities in which such fund is invested separate from all other securities held by him, and separate from the securities of other school district endowment funds in his custody. He shall be liable on his official bond for the endowment funds of school districts in his custody, and he shall, on or before the first day of July of each year account to the trustees of each school district in the county having an endowment fund, showing the condition thereof and the securities in which the same is invested, and the income received therefrom during the year. He shall also include said funds in his reports to the board of county commissioners.

En. Sec. 5, Ch. 4, L. 1923.

1015.6. Memorials to donors. The board of trustees of any school district having an endowment fund shall provide suitable memorials for all persons or associations of persons making gifts to the school district which will by the provisions hereof become a part of the endowment fund of the district.

En. Sec. 6, Ch. 4, L. 1923.

1015.7. Legalization of prior acts relative to dormitories. The official acts of every board of school trustees acting as such within the state of Montana, in purchasing or building dormitories and furnishing and equipping the same prior to the passage and approval of this act, which are for the benefit of their respective school districts and are used by the pupils and teachers thereof and are necessary for such purpose, are hereby legalized and confirmed, and made effectual and valid.

En. Sec. 1, Ch. 123, L. 1923.

1015.8. Leases of county lands to school districts authorized. Whenever any county of the state of Montana shall have acquired title to any real or personal property in any manner now provided by law and such property is suitable or useful for dormitory or gymnasium or school purposes to any public school located within the same city, town or school district where said property is situated, the board of county commissioners

of said county may, upon request of the board of trustees of any such school district, lease said property to such school district for school dormitory or gymnasium purposes for such rental as the said board of county commissioners may deem adequate and for such term of years, not exceeding four years, as the board may see fit.

En. Sec. 1, Ch. 151, L. 1925.

1016. Letting contracts and furnishing supplies, trustees not to be interested in.

Under this section, a contract made by a school board without first calling for bids, is void. *School Dist. No. 2 v. Richards et al.*, 62 Mont. 141, 205 Pac. 206.

For text treatment of this subject see vol. 23 Cal. Jur. 96.

1019. Limitation on purchase of maps, charts, etc.

Cited in *State ex rel. Hessler v. District Court*, 64 Mont. 296, 301, 209 Pac. 1052.

Power of school districts to provide maps and charts, note, 7 A. L. R. 793.

1019.1. Third class school districts—Keeping and examination of books. It shall be the duty of the county auditor in all counties having an auditor, and the county treasurer in all counties not having an auditor, to prescribe the method of keeping the books in school districts of the third class in their respective counties, and to make an examination of the books of such third class school districts at least once every year, and whenever directed so to do by the board of county commissioners, or requested by the board of trustees of such school districts. It shall be the duty of the clerk of districts of the third class of each of the several counties of the state to deliver to the county auditor or treasurer, as in this act provided, between the fifteenth day of June and the fifteenth day of July of each year, all books, vouchers, claims, and other papers pertaining to his office, and take a receipt therefor, and all such books, vouchers, claims and papers shall be examined by said auditor or treasurer and returned to the several clerks, not later than August 15th of each year.

Upon the completion of the examination provided for in this act, the auditor or treasurer, as the case may be, shall report the result of his examination by sending to the chairman of each board of trustees a written report of such examination and file a copy of each such report in the office of the county superintendent of schools.

En. Sec. 1, Ch. 34, L. 1923.

1019.2. Liability of officers for failure to keep books—Duty of county attorney. It shall be the duty of the board of trustees and the clerk of all school districts of the third class to keep the books of such district in the manner prescribed by the county auditor or county treasurer, as the case may be, and failure or refusal to do [so] shall constitute grounds for the removal from office of such trustee or trustees or clerk, and the costs of such removal shall be entered as a judgment against the officer so removed and be collected as other judgments on execution issued therefor. The county attorney shall prosecute all proceedings for removal of such officers, or the parties seeking such removal may employ private counsel, but in

either case the parties commencing the proceedings shall be liable for the costs thereof upon a failure to sustain the charge, which costs shall be entered as a judgment against the parties and collected on execution issued therefor.

En. Sec. 2, Ch. 34, L. 1923.

1019.3. Report of examination. The examining officer provided for in this act shall file a report setting forth in detail the result of any examination so conducted by him under the provisions hereof, in the office of the county clerk and recorder of the proper county.

En. Sec. 3, Ch. 34, L. 1923.

1019.4. Commissioners to furnish books. The county commissioners of each county shall furnish to each school district all the necessary books and blanks for carrying out the provisions of this act.

En. Sec. 4, Ch. 34, L. 1923.

CHAPTER 79.

SCHOOL DISTRICTS.

1020. School district defined.

Cited in *State v. McGraw*, 74 Mont. 152, 156, 240 Pac. 812; *O'Brien v. School District No. 1*, 68 Mont. 432, 434, 219 Pac. 1113.

For text treatment of this subject see vol. 23 Cal. Jur. 34.

1022. Powers as body corporate.

Cited in *State ex rel. School Dist. No. 28 v. Urton*, 76 Mont. 458, 463, 248 Pac. 369; *Henderson v. School District No. 44*, 75 Mont. 154, 160, 242 Pac. 979; *State v. McGraw*, 74 Mont. 152, 156, 240 Pac. 812; *O'Brien v. School District No. 1*, 68 Mont. 432, 434, 219 Pac. 1113.

As section 402, chapter 76, L. 1913, in *School Dist. No. 2 v. Richards et al.*, 62 Mont. 141, 147, 205 Pac. 206.

For text treatment of this subject see vol. 23 Cal. Jur. 50, 70, 109.

Right of school district to waive immunity from garnishment, note, 2 A. L. R. 1586.

Power to require construction or repair of school buildings, note, 1 A. L. R. 1559.

Liability of school district for injury to pupil, notes, 9 A. L. R. 911; 14 A. L. R. 1392; 21 A. L. R. 1328; 24 A. L. R. 1070.

Extent of power of school district to provide for comfort and convenience of teachers and pupils, note, 7 A. L. R. 791.

Providing free text-books and other supplies for individual use of pupils, note, 17 A. L. R. 299.

Employment by school district of physicians, nurses, oculists and dentists, note, 12 A. L. R. 922.

Permitting use of schoolhouse for religious meetings, note, 5 A. L. R. 886.

Liability of school district for trespass on real property, note, 45 A. L. R. 765.

Power of school district to submit to arbitration, note, 40 A. L. R. 1377.

1023. Limitation upon change of school districts. No school districts shall be created nor boundaries changed, between March 1st and July 1st of any calendar year.

Amd. Sec. 1, Ch. 18, L. 1923.

1024. New school districts—Procedure for creation. A new school district may be created out of portions of one or more existing school districts where the assessed valuation of property remaining in each district from which territory is taken is not reduced below seventy-five thousand dollars (\$75,000) and where the number of census children

between the ages of six and sixteen years is not reduced below ten. For the purpose of organizing a new school district out of one or more existing districts, a petition in writing shall be made to the county superintendent of schools signed by parents or guardians of at least ten census children between the ages of six and sixteen years, residing within the boundaries of the proposed new district, and residing at a greater distance than two miles from any schoolhouse owned by any one of such school districts in which a school is maintained. The petition shall describe the boundaries of the proposed new district and give the names of all children of school age residing therein at the date of the presenting of said petition. The petition shall also show the assessed valuation of the property within the proposed new district which must not be less than forty thousand dollars (\$40,000) as shown by the last completed assessment-roll. The county superintendent shall within five days from the receipt of such petition give notice of the hearing of said petition by posting or causing to be posted, a notice thereof at least ten days prior to the time appointed by him for consideration of said petition, in at least three of the most public places in the proposed new district and one on each schoolhouse door of each district affected by the proposed change, or if there be no schoolhouse, then in one of the most public places in each of said old districts; and shall on the day fixed in the notice proceed to hear said petition at the place designated in said notice, which must be either at the courthouse of the county or else at the schoolhouse in one of the school districts affected, unless a protest in writing signed by at least a majority of the school electors residing within such proposed school district shall be filed with the county superintendant of schools before or at the time fixed in the notice for the hearing of said petition, in which event the proposed school district shall not be created. If no such protest be filed, then the county superintendent, upon hearing the petition, shall within ten days from the date of such hearing, make an order establishing the new district and describe the boundaries thereof, or make an order denying such petition. An appeal may be taken to the board of county commissioners of the county, from either order made as aforesaid by three resident taxpayers of either the old or the new district who are dissatisfied with said order. Such appeal shall be taken within thirty days of the date of the order and upon the hearing of said matter by the board of county commissioners, a decision shall be rendered which shall be final. The appeals mentioned in this section shall be in writing, subscribed by the parties taking the appeal and shall recite sufficient facts to show their rights to appeal hereunder and that it is an appeal from the decision rendered, and such an appeal shall be filed with the county superintendent within thirty days from the date of the order establishing such new district or denying such petition. The county superintendent shall, within twenty days from the filing of such notice of appeal, transmit to the board of county commissioners and file in the office of the county clerk, the notice of appeal and all petitions, plats and papers in his possession pertaining to the petition for the creation of such new school district. The county clerk shall, forthwith, upon receipt of such notice of appeal and other papers, give notice to all parties interested by causing to be posted at least ten days prior to the date of the next regular meeting of the

board of county commissioners, in at least three of the most public places in the proposed new district, and one on each schoolhouse door of each district affected by the proposed change, or if there be no schoolhouse then in one of the most public places in each district of said old districts, notices to the effect that the board of county commissioners will at its office in the courthouse upon a certain date, specifying the same in such notices, which date shall be during the next regular session of the board, finally hear and determine said appeal and said petition for the creation of such new district.

Amd. Sec. 1, Ch. 138, L. 1927.

1025. Organization of school districts from part of existing districts.

Rep. Sec. 2, Ch. 138, L. 1927.

1032. Trustees may issue bonds.

Rep. Sec. 34, Ch. 147, L. 1927.

1033. District boundaries.

Cited in *Henderson v. School Dist.* For text treatment of this subject see No. 44, 75 Mont. 154, 160, 242 Pac. vol. 23 Cal. Jur. 38. 979.

1034. Consolidated districts—Procedure in event of consolidation—Bonded debts.

Cited in *Henderson v. School Dist.* No. 44, 75 Mont. 154, 160, 242 Pac. 979.

1035. Joint districts—Formation, control, discontinuance.

Cited in *State ex rel. School District No. 28 v. Urton*, 76 Mont. 458, 464, 248 Pac. 369; *State ex rel. Redman v. Meyers*, 65 Mont. 124, 129, 210 Pac. 1064. For text treatment of this subject see vol. 23 Cal. Jur. 37.

1036.1. Joint school districts—Tax levies. The board of school trustees of each joint school district, at the time of certifying to the boards of county commissioners the amount of money needed by such joint school district, and which is to be raised by a special tax levy for the general fund of the joint school district, for bond sinking and interest funds, and for each other fund for which a special tax levy may be made, shall also deliver or transmit a copy of such certificate, or certificates, to the county superintendent of schools of each county in which any part of such joint school district is situated. The county superintendents of all such counties must, either by correspondence, meetings, or in some other manner, ascertain and determine the number of mills which should be levied in such joint school district for each fund for which a levy is to be made, and which must be the same for each fund throughout the entire joint district, but must not exceed the limits prescribed by law for such levies. The number of mills to be levied for each such fund shall be ascertained and determined by such county superintendents by dividing the amount of money so certified as being required or needed for each such fund by the assessed valuation of the joint school district for such year and by then changing the fraction or decimal resulting therefrom to

mills. After ascertaining and determining the number of mills which should be levied for each such fund, in the manner herein provided, all such county superintendents of schools shall make and sign a joint statement, addressed to the board of county commissioners of each county in which a part of the joint school district is situated, setting forth the number of mills which should be levied for each fund, as so ascertained and determined by such county superintendents, by the boards of county commissioners of such counties, and shall deliver or transmit one copy of such statement to each such board of county commissioners not later than the Saturday immediately preceding the second Monday in August.

En. Sec. 1, Ch. 105, L. 1925.

1036.2. Commissioners to fix tax levy. At the time of fixing the tax levies for county and school purposes the board of county commissioners of each county in which any part of the joint school district is situated, shall fix the tax levy for each fund for such joint school district at the number of mills for each such levy recommended by such superintendent of schools in such joint statement, it being the purpose of this act to require that every tax levy for each fund for a joint school district shall be uniform and at the same rate throughout the entire joint district for such fund.

En. Sec. 2, Ch. 105, L. 1925.

1037. Discontinuance as joint district.

Rep. Sec. 6, Ch. 115, L. 1927.

1037.1. Dissolution of joint school districts. A joint school district may be dissolved in the following manner:

Whenever the majority of the qualified electors residing in that portion of a joint district situated in one county presents a petition to the county superintendent of schools of the same county praying for a dissolution of the district and setting forth briefly the reason therefor, such county superintendent shall immediately give notice thereof to all other county superintendents of counties contributing territory to the joint district, and shall within twenty (20) days from the date of the receipt of such petition call an election and fix a date for the holding of same, and shall notify the clerk of the district to post three notices in the territory of each county composing the district. Notices must be posted in the most conspicuous places in the territory and must be posted at least fifteen days preceding the election. Such notices must specify the purpose and the date and hour when the polls will be open and the place at which the election will be held. Separate elections must be held in each portion of the district lying in different counties on the same date and hour and be conducted in the same manner as general school elections. Each county superintendent of schools must appoint three judges of election for the territory in his or her county and the result of the election must be certified by the judges to their respective county superintendents. The county superintendents shall meet within five days after the election and determine the total vote cast throughout the district. If a majority of all votes cast in the district are for dissolution, the district must be dis-

solved; or in the event that two-thirds ($\frac{2}{3}$) of the votes cast in the territory of any county favor dissolution the district may be dissolved as to such territory; provided both superintendents of the counties affected are agreed that such dissolution will not entail an undue hardship to either part of such joint district, and that there is no good and sufficient reason why such dissolution should not be made. In case of the failure of a two-thirds ($\frac{2}{3}$) majority in any portion of the district, as herein provided, or a failure of the majority of the entire district to vote for dissolution, the district shall not be dissolved and no election thereon can be held within three (3) years thereafter. If dissolution carries it shall take effect at the end of the current school year.

En. Sec. 1, Ch. 115, L. 1927.

1037.2. Existing districts valid when. Any school district heretofore created out of a joint district without the concurrent action of the various county superintendents and boards of county commissioners of the various counties having territory within the district, or where all the requirements of the statutes have not been fully complied with and such district has functioned for a period of two (2) years or more, is hereby declared to be a valid subsisting school district.

En. Sec. 2, Ch. 115, L. 1927.

1037.3. Disposal of property—Limitation of new districts. In case of the dissolution of any joint school district as herein provided the territory shall be immediately formed into a new district or attached to an existing district by the county superintendent of schools, provided that no new district shall be created where the assessed valuation is less than \$75,000 and where fewer than ten census children reside within the territory.

En. Sec. 3, Ch. 115, L. 1927.

1037.4. Indebtedness, how adjusted. Where a joint district has been dissolved as herein provided the various county superintendents shall meet and adjust the indebtedness and apportion the funds and property upon the following basis:

First. Indebtedness created on account of permanent school property acquired shall be divided after deducting all sinking funds in proportion to the value of school property situated in each portion of the district.

Second. Indebtedness incurred for current expenses of schools, whether represented by bonds or warrants, shall be apportioned upon the basis of the assessed valuation of the various portions of the district as determined by the last completed assessment preceding the election, after deducting from warrant indebtedness all moneys in the general fund of the district.

Third. District funds remaining to the credit of the district in the various counties shall be apportioned on the basis of the census children of the district as shown by the last school census.

En. Sec. 4, Ch. 115, L. 1927.

1037.5. Copies of adjustment—Change of boundaries. Each county superintendent shall furnish the county treasurer of his or her county

with a copy of the adjustment as agreed upon by them and the county treasurer shall make any remittances necessary to carry out the adjustment. Where a change in boundary lines has affected inter-county property subject to assessment by the state board of equalization, the county superintendent of schools shall also notify the state board of equalization of such change of boundaries.

En. Sec. 5, Ch. 115, L. 1927.

1038. Joint school districts on division by creation of new county.

This section, relating to the creation of joint school districts, is invalid as special legislation upon a subject covered by a general statute (sec. 1035), in that it operates only upon existing districts divided by the creation of new counties under the New Counties Act and excludes from its operation all exist-

ing districts which may have been or may be divided by the creation of new counties by direct legislative acts. State ex rel. Redman v. Meyers, 65 Mont. 124, 210 Pac. 1064.

Cited in State ex rel. School District No. 28 v. Urton, 76 Mont. 458, 463, 248 Pac. 369.

CHAPTER 80.

RURAL SCHOOL DISTRICTS.

1040. Definition of terms. The following terms shall be construed to mean:

The "rural school district" shall mean the territory obtained by the uniting of all third class districts and parts of first or second class districts as may petition to become a part of the "rural school district."

"Subdivision" shall mean one of the four parts into which the "rural school district" is divided for purposes of election of trustees.

"Subdistrict" shall mean the local third class district as constituted by chapter 76 of the session laws of the thirteenth legislative assembly, which is section 1021 of the Revised Codes of Montana, 1921.

Amd. Sec. 1, Ch. 178, L. 1925.

1041. Formation of rural school districts in any county of Montana which shall accept the provisions of this act. All school districts and parts of school districts of the third class and minor portions of any district of the first and second class which may petition to withdraw from the first or second class district as herein provided, shall for the purpose set forth in this act, from and after the first day of July, 1925, together constitute a single district to be known as the "rural school district" of the county in which it is situated. Such rural district shall be a unit for the purpose of taxation and such other purposes as are hereinafter provided, and shall be divided into subdivisions for the selection of trustees and consist of subdistricts for the purpose of local management, local control, and custody of property. The boundaries of the subdivisions shall be determined by the board of county commissioners who shall divide that portion of the county to be included in the rural school district of the county, into four parts which shall be known as subdivisions, each having as near as may be one-fourth of the total area of the rural school district, and making the boundaries of those parts coincide with the boundaries of the subdistricts. All portions of first and second class districts, which become a part of the rural school district as herein provided, shall be

attached to adjacent subdistricts in the manner provided by law. Boundaries of subdivisions may be altered by county commissioners at a later date in case county division or other cause may unduly reduce or increase the size of a subdivision or subdivisions.

A majority of the school electors of rural sections of first and second class districts residing not nearer than six miles to the largest school in such first and second class districts may present a petition in writing to the board of county commissioners asking for transfer from the first or second class district to the rural school district, which petition shall describe the boundaries of the territory proposed to be transferred and the number of children affected by such transfer. Upon receipt of such petition the county commissioners shall call a meeting for the purpose of considering such petition and shall notify all parties interested including the board of trustees of the first or second class district by posting or causing to be posted at least ten days prior to the date of such meeting in at least three of the most public places in the proposed territory to be transferred and in three of the most public places in the remaining portion of the old district notices stating the time, place and purpose of such meeting of the board of county commissioners, which meeting of the board of county commissioners shall be not less than twenty days from the date of the receipt by the board of such petition. The board of county commissioners at such special meeting shall approve or deny the said petition and shall enter their approval or denial upon the records of the county within ten days from the date of such meeting. In case the petition is granted, such territory transferred may be made a part of adjacent subdistricts or created a subdistrict of the rural school district.

Amd. Sec. 2, Ch. 178, L. 1925.

1042. Petition for adoption—Election—Membership of board. Any county in the state may adopt the county unit system for rural schools provided in the succeeding sections of this act, on the conditions hereinafter prescribed as follows:

Whenever, between the first day of December of any year and the first day of April of the following year, twenty per cent of the registered electors residing in the third class school districts of any county shall petition the board of county commissioners requesting that the county unit system for rural schools be established in such county, the county commissioners shall call an election to be held in all third class districts of the county, within ninety days, and in any event not later than the tenth day of May following. The county commissioners shall appoint precinct judges and clerks, and the election shall be conducted in accordance with the general election law of the state, and the judges and clerks of such election shall serve without compensation. The place of election in each precinct shall be the established polling place in each precinct. All registered electors residing in the proposed rural school district and whose names appear upon the registration books of the county upon the day of calling such election, shall be entitled to vote upon such election. The polling books of any precinct shall not contain the names of any registered electors residing in any district of the first and second class. The county clerk shall give twenty days' notice of such election by publi-

cation in the official paper of the county that the question of adopting the county unit system for rural schools will be submitted to the qualified electors in all third class districts of the county at the time designated. It shall not be necessary to give notice of closing of registration books of the county in elections held pursuant to the provisions of this act. But the registration books of the county for such election shall automatically close upon the day of calling such election. The qualified electors of the proposed rural school district shall vote by ballot for or against the adoption of the county unit system for rural schools. An elector desiring to vote for such adoption shall do so by marking (X) on his ballot before the phrase, "For the rural school district"; an elector desiring to vote against such adoption shall do so by marking (X) on his ballot before the phrase, "Against the rural school district."

After the election the ballots shall be counted and the votes canvassed and returns shall be made to the county clerk in the manner prescribed in the general election laws. If a majority of the votes cast at the election is in favor of the county unit, the board of county commissioners shall make and enter an order creating such rural school district and establish the boundaries of each subdivision, and this act shall become effective in so far as the county is concerned.

If a majority of the votes cast at such election is against organization of the rural school district, another election upon the question of organizing a rural school district cannot be held until after the expiration of two years.

As soon as the board of county commissioners has for the first time established the boundaries of the subdivisions as hereinbefore provided, the said board of county commissioners shall thereupon appoint one elector from among the residents of each of the four subdivisions of the rural school district of the county. Of these four trustees so appointed two shall serve until the first regular school election after their appointment, one until the second regular school election after his appointment, and one until the third regular election after his appointment, the terms of trustees so appointed to be determined by lot.

The chairman of the board of county commissioners, the county superintendent of schools and the county treasurer shall be ex-officio members of the board. No ex-officio member of the board may serve as chairman, nor may such member receive any further remuneration for his services than his regular salary for the other duties of his office. The county superintendent of school shall be ex-officio secretary of the board and it shall be his duty to enforce rules, regulations and orders of the board.

In any county in which a rural school district is in operation at the time of the passage of this act the county commissioners shall, at least twenty days previous to the first ensuing school election, redistrict the county into four subdivisions for purposes of election of trustees from the rural school district as heretofore provided. In case the term of one trustee of the rural school district is expiring in 1925 at the next ensuing election no trustee shall be elected as his successor. In case the terms of two trustees of the rural school district of such county are expiring in 1925 it shall be determined by lot which one of the two members shall

continue on the board. On the third Saturday of April in such county the chairman of the board of county commissioners, the county superintendent of schools and the county treasurer shall become ex-officio members of the board of the rural school district as heretofore provided in this section.

Amd. Sec. 1, Ch. 68, L. 1923; Amd. Sec. 3, Ch. 178, L. 1925.

1043. Qualifications and election of trustees—Petitions for nomination and election. The elected trustees shall be electors of the subdivision of the rural school district of the county in which they are to serve. Except as hereinbefore provided such trustees shall be elected at the annual school election and shall serve for three years and until their successors are elected or appointed and qualify.

On or before fifteen days prior to the annual school election, there may be filed with the secretary of the board of trustees of the rural school district, petitions signed by at least twenty-five qualified electors of each subdivision of the rural school district in which the term of a trustee is about to expire, nominating candidates for trustees to be voted for at the ensuing election, and if any trustees are to be elected to complete unexpired terms, as hereinafter provided, such petition shall state whether the persons nominated therein are nominated for such unexpired terms or for full terms of three years. The board of trustees shall cause the names of all candidates for trustees of the rural school district to be printed and sent to the clerk in each subdistrict of the part in which a trustee is to be elected, to be posted at each polling place at least five days preceding the election. The election of school trustees shall be held and conducted under the supervision of the trustees of the local subdistrict, who shall not less than fifteen days before the annual election post notices in three public places in their subdistricts, which notices must specify the time and place of election and hours during which the polls will be open. The local trustees must appoint, by an order entered in their records, three qualified electors of said subdistricts to act as judges at said election, and the local clerk shall notify them by mail of their appointment. If the judges are not present at the time of opening the polls, the electors present may appoint judges, and the judges so appointed shall designate one of their number to act as clerk. The voting must be by ballot without reference to the general election laws in regard to nominations, forms of ballot, or manner of voting, and the polls shall be open for such time as the board of trustees may order; provided that such polls must be open between two P. M. and six P. M. It shall be the duty of the judges of the election to canvass the votes cast in their respective subdistricts for trustees, and make returns of the same to the county clerk in the manner and form as may be prescribed by the general election law of the state in so far as the same may be applicable to school elections. The returns shall be canvassed and the result declared by the county commissioners and certificates of election issued by the county clerk in the same manner as may be prescribed by the general election laws of the state in so far as the same may be applicable thereto; provided that in the election of said board of trustees the votes cast in each of the four subdivisions of the rural school district, shall be canvassed

separately and the candidates receiving the largest number of votes in any one subdivision shall be elected as the trustee for such subdivision; provided, further, that no one shall be eligible as trustee who is not at the time of his election or appointment a bona fide resident and elector of the subdivision of the rural school district for which he is elected.

Persons elected or appointed as trustees shall qualify by taking an oath to perform their duties according to law. Their oaths may be administered by the county superintendent or any other officer authorized by law to administer oaths, and must be filed with the clerk of the board of trustees within fifteen days after the election or appointment. The board of county commissioners shall appoint trustees to fill vacancies in the board of rural school district trustees; provided, that such appointment is confirmed by the majority of the remaining members of such board. Trustees so appointed shall serve till the next regular school election, at which election successors shall be elected to serve for the unexpired balance of the term, if any.

Amd. Sec. 2, Ch. 68, L. 1923; Amd. Sec. 4, Ch. 178, L. 1925.

1044. Powers and duties of trustees—Budget—Taxes. The board of trustees of every rural school district shall have only the powers and shall perform only the duties enumerated in this act. The board of trustees of each subdistrict of the rural school district shall have all the powers and perform all the duties imposed upon trustees of school districts according to the provisions of chapter 76 of the session laws of the thirteenth legislative assembly and acts amendatory thereof and supplementary thereto, except, as modified by the terms of this act.

The board of trustees of each subdistrict of the rural school district shall not later than the last day of May prepare and certify to the board of trustees of the rural school district, a budget containing an estimate of all of the different items of expenditures for operation and maintenance to be incurred by such subdistricts for the ensuing school year. Such budget shall explain in detail the several items of estimated expenditures, together with an explanation of the necessity therefor. Such budget shall also be accompanied by a full and complete report of the school facilities of the subdistrict and of the educational opportunities afforded to each child in such subdistrict. Any board of trustees of a subdistrict making expenditures in excess of their budget shall have deducted from their budget for the ensuing year the amount of such excess expenditure, unless the county board of trustees authorized such expenditure from its emergency fund.

For high school expenses in excess of the revenues derived from the high school levy of the county and for any extraordinary expenditure or expenditures for any purpose other than operation and maintenance of elementary schools to be incurred by a subdistrict, not included in the budget for such subdistrict, as adopted by the board of trustees of the rural school district, the board of trustees of such subdistrict may cause to be levied upon the property in the subdistrict a special tax pursuant to the provisions of section 1203 of the Revised Codes of Montana 1921.

The board of trustees of the rural school district shall on the first Monday in June, examine the budgets certified to it by the trustees of

the several subdistricts, and from such budgets shall prepare a complete budget for the rural school district, which shall provide for the furnishing of reasonable educational facilities to every child in the rural school district, including the payment of board or rent, or both, and transportation of children from isolated sections, in cases where the same is more expedient than maintaining a school in such isolated sections; all interest on all outstanding bonds issued by such rural school district or the payment of which has been assumed by such district, and so much of the principal of any such bonds as is to become due during the ensuing school year and also including any other reasonable item of expenditure not herein enumerated, and necessary for carrying out the provisions of this act. Such budget shall contain the detailed estimated expenditures of each subdistrict. Patrons shall have the right to appeal to the board of trustees of the rural school district in case provision of educational opportunities of children have been neglected or overlooked by the trustees of the subdistrict, and the decision of the trustees of the rural school district shall be final.

The board of trustees of every rural school district is hereby authorized to include in the budget for any year as a separate item an amount not in excess of a one-half mill levy to provide for the following general purposes affecting the entire rural school district or for any of them: The supervision of the health of students, employment of a truant officer, provision for new students in any local district who may have come into said district after the adoption of the budget for said district and not provided for in said budget. They shall also be authorized to provide a levy not in excess of one mill in any one year for establishing a building fund for the erection of portable or other school buildings, barns, dormitories or teacherages when the same are deemed necessary by the board of trustees of the rural school district and to make provision of necessary building facilities for isolated and special cases. Whenever such extra levies are made the board of trustees of the rural school district shall specify the purposes for which same are to be used and make the expenditures for said purposes as set out in said budget.

The board of trustees of the rural school district shall on or before the second Monday in June in each year certify to the board of county commissioners the total amount of money required in excess of the state and county apportionments to be raised by taxation for the rural school district pursuant to the budget adopted by the board, and the board of county commissioners shall cause to be levied at the time of the levy of taxes for state and county purposes, a sufficient levy upon all of the taxable property within the rural school district to raise the amount of money so certified by the board of trustees of the rural school district, after allowing a deduction of ten per cent on account of delinquencies. The board of trustees of the rural school district shall at its regular meeting held on the second Thursday in December, apportion to the several subdistricts their proportionate part of the taxes then collected, such proportionate part to be determined in accordance with the budget as above mentioned. They may at this meeting make such adjustments in the budgets as may seem necessary because of new conditions arising since the budgets were allowed.

Any warrant issued by any subdistrict board, except for salaries, shall be countersigned by the secretary of the board of trustees of the rural school district. Said secretary is authorized to countersign only such warrants as are drawn in payment of expenses approved by the board of trustees of the rural school district in the budget of the subdistrict. Hereafter all warrants issued by subdistricts shall carry the notation "This warrant not valid, except for salaries, unless countersigned by secretary of board of trustees of the rural school district."

The board of trustees of the rural school district is authorized to close schools with an enrollment of fewer than five pupils, if in the judgment of said board, such children can be cared for more economically and in a satisfactory manner in another school. Said board shall also be empowered to place text-books and equipment of schools closed in other communities where such materials are needed, provided that such text-books, and equipment shall be replaced or new materials shall be provided in their stead at such time as it may become desirable to reopen said school.

The faith of the rural school district is solemnly pledged for the payment of the interest and the redemption of the principal of the bonds which at the time when this act takes effect have been issued or assumed by the rural school district. And for the purpose of enforcing the provisions of this chapter, the rural school district shall be a body corporate, which may sue and be sued by or in the name of the board of school trustees of such district.

The board of trustees of the rural school district shall be authorized to establish a salary schedule based upon teaching experience, training and certification of teachers and to determine transportation rates and allowances for board and house rent.

Amd. Sec. 3, Ch. 68, L. 1923; Amd. Sec. 5, Ch. 178, L. 1925.

1045. Sinking fund of third class districts. All sinking funds on hand as a surplus or credit to the various third class districts in any county prior to and on July 1st of the year in which the provisions of this act shall be accepted in such county shall remain as the sinking funds of the several subdistricts and in no event may they be used for any other purpose than as the sinking fund of the subdistrict. All moneys to the credit of the general or special funds of subdistricts prior to and on July 1st of the year in which the provisions of this act shall be accepted shall remain to credit of such general or special funds of subdistricts and shall serve to reduce the levies of such subdistricts the first year as many mills as would be required to procure by special levy on the subdistrict the amount of money on hand to the credit of the subdistrict, unless such funds are required for meeting contracts already entered into when the rural school district begins to operate.

All of the existing indebtedness of the various third class districts in any county prior to and on July 1st of such year, whether for maintenance or bonded indebtedness, or otherwise, shall remain the indebtedness

of and be paid by the subdistricts, such payments being made from a sub-district special levy for that purpose.

Amd. Sec. 4, Ch. 68, L. 1923; Amd. Sec. 6, Ch. 178, L. 1925.

1047. Meetings of board—Election officers—Compensation—Forfeiture of office. The regular annual meeting of the board of trustees of the rural school district shall be held on the first Thursday in July. At this meeting new members elected shall take office; a president shall be elected for the ensuing year by the board from among its own membership; and the executive officers of the board shall make their annual reports. Another regular meeting shall be held on the second Thursday in December and special meetings may be called by the president, or by three other members of the board. Each member of the board of trustees of the rural school district shall be paid from the general fund of the county his necessary traveling expenses in attending regular meetings, but not to exceed four special meetings, and an honorarium of seventy-five dollars per year. Failure to attend two regular meetings in succession, unless excused on account of sickness shall work a forfeiture of the office.

Amd. Sec. 5, Ch. 68, L. 1923.

1048. Dissolution of rural school districts—Procedure to effect. A rural school district organized under the provisions of this act may be dissolved after the expiration of four years from the date of its organization, in the following manner, to wit:

Whenever, between the first day of January and the first day of March in any year after four full school years have expired twenty per cent of the registered electors in a rural school district shall petition the board of trustees of the rural school district requesting the dissolution of such school district, the board of trustees of the rural school district shall submit such petitions to the county clerk, and the county commissioners shall call an election which shall be held in all third class districts of the county and conducted in the manner prescribed for the adoption of the rural school district as set forth in section 1 of this act. If a majority of votes cast at such election shall be in favor of the dissolution of the rural school district, the board of county commissioners shall make an order to that effect and on and after July 1st the rural school district shall be dissolved and the several subdistricts shall thereupon become school districts of the third class.

If the election for the dissolution of such school district should fail to carry, another election upon the question of dissolution of such school district may not be held until after the expiration of two years.

The board of county commissioners shall distribute funds of the rural school district and apportion the indebtedness of the rural school district in the following manner. Each school district (formerly a subdistrict) shall thereupon become the owner of all the property of the rural school district located within its boundaries. The county commissioners shall apportion to each school district that portion of the funds of the rural school district other than sinking funds, which is in proportion to the number of school census children within the school district. Provided that

in the counties where the rural school district was organized prior to the passage of this act the county commissioners of the county shall continue to levy the taxes upon all the property located within the territory which formerly constituted the rural school district, until the interest and the principal of all bonds issued by the rural school district shall have been paid in full.

Amd. Sec. 6, Ch. 68, L. 1923; Amd. Sec. 7, Ch. 178, L. 1925.

CHAPTER 81.

CLERKS OF SCHOOL DISTRICTS.

1051. School census, how taken and reported. The clerk of the school district shall make annually between the fifteenth day of September and the fifteenth day of October of each year an exact census of all children and youths between the ages of six and twenty-one years residing in the district. The term "residing" as used in this section shall be defined in such a way as to include (1) children residing with their parents or guardians in such district, (2) children temporarily residing outside of such district for the purpose of attending any district school or county high schools or other public institution of learning or any benevolent or private institution, providing that parents of resident children of any district must be residing in the district on the first day of October and provided further that the resident children themselves must have been actual residents of the district immediately previous to such outside residence. The term "residing" is further defined in such a way as to exclude (1) children temporarily visiting in or passing thru such district, (2) children who have never actually resided within the district, even tho their parents or guardians shall reside within the district, (3) children who are residing within the district for the purpose of attending any district school or county high school or other public institution of learning or any private or benevolent institution of learning who shall be listed in the school district where their parents reside, (4) all children who may properly be included in the census of some other district. He shall take specifically and separately a census of all children under the age of six years in the manner aforesaid. The census of the clerk shall be made in alphabetical form upon blanks to be furnished by the county superintendent of schools and shall show the following facts:

1. The full name of all children less than twenty-one years of age and residing in the district on the first day of October. Such names shall be given by families under the name of the parents or guardian.

2. The Christian and surnames of both parents or guardian including initials of all middle names together with the place of residence of said parents or guardian specified by street and number if living in city or town, or if living in any other than a city or town the postoffice address of such parents or guardian must be given. The year, month, and day on which each child was born and the age in years counting the first day of October and sex.

3. Such other facts as the superintendent of public instruction may require.

He shall make under oath two full reports on blanks furnished for the purpose to the county superintendent of schools within fifteen days after the completion of the census and a copy of said report shall be delivered to the school trustees. Failure to make such report as specified, or the inclusion in such report of names of children which are fictitious or names of children which [who] are not residents of the district shall constitute a misdemeanor and shall be punishable by a fine of not less than ten dollars (\$10) nor more than fifty dollars (50). For taking the census the district clerk shall be paid by the board of trustees from the county school money to the credit of the district in the same manner as other contingent expenses are paid at a rate not exceeding ten cents for each child's name returned by him. The clerk shall not be paid for taking the census until after the list has been checked by the county superintendent, as hereinafter provided, and the correct number of children reported to the school trustees. He shall receive such other compensation for other services as may be allowed by the board of trustees. In case any district clerk shall fail to take the census as provided in this act or shall fail to take a proper and accurate census at the proper time and if thru such neglect the district fails to receive its apportionment of school money, such school clerk shall be individually liable to the district for the full amount so lost and it may be recovered on a suit by any citizen of such district in the name and for the benefit of such district.

Amd. Sec. 1, Ch. 118, L. 1927.

The "exact census" of all school children of school age within a given school district which the clerk thereof is required by this section, to make contemplates a precisely accurate one, to wit, one in which only children resident in the district may be included. State ex rel. Johnson v. Kassing, 74 Mont. 25, 238 Pac. 582.

Since the residence of a minor of school age committed to the State Vocational School is where the father or mother resides (Rev. Codes, sec. 33, subd. 4), inmates thereof sent thereto

from the various counties of the state are not resident in the school district in which that institution is located, within the meaning of this section, and therefore mandamus does not lie to compel its superintendent to furnish a list of them to the clerk of that district for school census purposes. State ex rel. Johnson v. Kassing, 74 Mont. 25, 238 Pac. 582.

Cited in Peterson v. School Board et al., 73 Mont. 442, 450, 236 Pac. 670; O'Brien v. School District No. 1, 68 Mont. 432, 435, 219 Pac. 1113.

1051.1. Examination census by superintendent — Correction of list.

It shall be the duty of the county superintendent of schools upon receipt of the report as provided in section 1 of this act to carefully examine the same and check it for errors or duplications with other census reports filed by other clerks of school districts of his county. For the purpose of assisting him in checking duplication in such reports, he shall make an alphabetical card index, classified by families, showing the names of all children on the school census, which index shall be prepared in duplicate and a copy thereof forwarded to the superintendent of public instruction as provided hereafter. If the name of the same person be found upon more than one report or if the report contains names which are fictitious or names which properly belong in some other school district, he shall strike out such fictitious names and all duplicate names from all lists except that of the district in which such person was residing in good faith on the first day of October. If the county superintendent should find upon

any census list the names of any persons who he believes were not residents in good faith in such district as aforesaid or which he believes are fictitious, he shall notify the clerk of the particular school district and if said clerk shall not establish the correctness of the list within fifteen days after such notification, such names shall be stricken from the list. At the time of taking the annual census the clerk shall use reasonable diligence to ascertain the number of blind and deaf mute persons residing in the district between the ages of five and twenty-one years with the names and post-office addresses of each.

En. Sec. 2, Ch. 118, L. 1927.

CHAPTER 82.

GRADES AND COURSES OF STUDY IN THE PUBLIC SCHOOLS.

1056. Who may attend.

Cited in Peterson v. School Board et al., 73 Mont. 442, 445, 236 Pac. 670;	Extent of legislative power with respect to attendance, note, 39 A. L. R. 477.
State ex rel. Robinson v. Desonia et al., 67 Mont. 201, 203, 215 Pac. 220.	Smoking as ground for expulsion or suspension, note, 33 A. L. R. 1180.

For text treatment of this subject see vol. 23 Cal. Jur. 141.

CHAPTER 83.

SCHOOL DAY, MONTH AND YEAR—HOLIDAYS—PIONEER AND ARBOR DAY.

1061. School year.

Cited in State ex rel. Robinson v. Desonia et al., 67 Mont. 201, 203, 215 Pac. 220.

CHAPTER 85.

TEACHERS—POWERS AND DUTIES.

1074. Certificate of qualification.

Rep. Sec. 5, Ch. 131, L. 1923.

1075. Teachers deemed re-elected when. After the election of any teacher or principal for the third consecutive year in any school district in the state, such teacher or principal so elected shall be deemed re-elected from year to year thereafter at the same salary unless the board of trustees shall by majority vote of its members on or before the first day of May give notice in writing to said teacher or principal that he has been re-elected or that his services will not be required for the ensuing year; provided that nothing in this act shall be construed to prevent re-election of such teacher or principal by such board at an earlier date, and also provided that in case of re-election of such teacher or principal, he shall notify the board of trustees in writing within twenty days after the notice of such re-election of his acceptance of the position tendered him for another year and failure to so notify the board of trustees shall be regarded as conclusive evidence of his nonacceptance of the position.

Amd. Sec. 1, Ch. 87, L. 1927.

Cited in Le Clair v. School Dist. No. 28, 74 Mont. 385, 390, 240 Pac. 391.

1086. Normal training required for teachers' certificates.

Rep. Sec. 6, Ch. 131, L. 1923.

1087. Suspension of teachers' certificates.

Rep. Sec. 7, Ch. 131, L. 1923.

CHAPTER 86.**STATE AND COUNTY EXAMINATIONS AND CERTIFICATES.**

1088. Examinations and certificates—Certificate of qualification required of teachers. 1. No certificate to teach in the public schools of Montana shall be granted to any person who is not a citizen of the United States or who has not declared his intention of becoming a citizen of the United States; provided that, when such certificate to teach in the public schools in the state shall be issued to any person who shall not within seven years become a citizen, such certificate shall be automatically revoked and such person shall be ineligible to receive a certificate until he becomes a full citizen.

2. No person is eligible to teach in any public school in this state, or to receive a certificate to teach, who has not attained the age of eighteen years and who has not secured a health certificate from a reputable physician.

3. No person shall be accounted a qualified teacher within the meaning of the school law who has not first secured from the state board of educational examiners a certificate setting forth his qualifications; or who has not secured a temporary certificate from the state board of educational examiners; or who has not a certificate indorsed by the county superintendent of schools; or who has not a state certificate or a life certificate issued by the state board of education or the state board of educational examiners; or who has not a temporary state certificate issued by the state superintendent; or who does not hold a certificate from the State Normal College; or who has not a university certificate of qualification to teach.

4. All certificates before they shall be valid in any county must be registered in the office of the county superintendent of schools of such county within ten days after the term of service of any teacher begins. Not more than ten days' salary shall be paid any teacher for services rendered previous to the registration of such certificate.

Amd. Sec. 8, Ch. 131, L. 1923.

Unlicensed teacher's right to recover for services, note, 30 A. L. R. 890.

For text treatment of this subject see
vol. 23 Cal. Jur. 119 et seq.

1089. The state board of educational examiners. 1. There is hereby created a state board of educational examiners whose duty it shall be to provide rules and regulations for the issuance of all teachers' certificates. Such rules and regulations shall be subject to the approval of the state board of education. The state board of educational examiners shall prepare the questions for teachers' examinations, provide the necessary assistance and oversee the marking and grading of papers.

2. This board of educational examiners shall be composed of the superintendent of public instruction, who shall be ex-officio chairman of the board, one member from the faculty of one of the component institutions of the University of Montana, one county superintendent of schools, one high school principal, and one district superintendent, all four to be elected by the state board of education upon the nomination of the superintendent of public instruction at the April meeting of the board.

3. All appointments shall be for two years except two of the first appointments, which two shall be for one year. All vacancies shall be filled for the unexpired term. The members shall serve without pay except for necessary expenses and any bills incurred by them must be paid out of the moneys received as fees for certificates.

Amd. Sec. 8, Ch. 131, L. 1923.

1090. County board of educational examiners.

1. *How constituted.* In each county there shall be a board of county examiners composed of the county superintendent of schools who shall be ex-officio chairman of the board, and two competent persons recommended by the county superintendent, appointed by the board of county commissioners, who at any time of their appointment shall be residents of the county and shall have been actively engaged in teaching for a period of at least eighteen months. Two members of this board shall constitute a quorum for the transaction of business. If vacancies occur in these positions during the terms for which their incumbents were appointed, their successors shall be appointed to serve during unexpired terms only. Upon the expiration of the regular term of either of these examiners his successor shall be appointed to serve for two years.

2. *Qualifications.* Such examiners at the time of their appointment, must be holders of Montana professional county certificates, or state certificates, or life certificates or diplomas from the State University, State Normal College, or State College of Agriculture and Mechanic Arts, or holders of diplomas as graduates from some reputable university, college, or normal school other than those of Montana. These examiners shall qualify for their positions in the same form and manner required for the qualification of all county superintendents.

3. *Duties.* The duties of these two examiners shall be to act jointly and equally with the county superintendent in the matter of conducting the examination of teachers when requested so to do by the county superintendent. The board of examiners shall also conduct all eighth grade examinations in their respective counties when requested to do so by the state board of education under their rules and regulations; and it shall be empowered to grant eighth grade diplomas or common school certificates to all examinees successfully passing such examinations.

4. *Compensation.* The compensation of these examiners shall be their actual traveling expenses from their residences to and from the county seat or other point in the county where the examinations are held, and such further compensation per diem as the board of county commissioners may deem just and sufficient for their services, basing such compensation

upon the actual quantity of work performed by them and the actual time required to perform it. Such claims shall have the approval of the county superintendent of schools.

Amd. Sec. 8, Ch. 131, L. 1923.

1091. Teachers' examinations. 1. The county board of educational examiners shall hold public examinations of all persons over eighteen years of age offering themselves as candidates for certificates to teach at the county seat, on the first Thursday and Friday of May and October of each year, and, when necessary, such examinations may be continued on the following day, at which time the board shall examine such candidates by a series of written or printed questions, according to the rules prescribed by the state board of educational examiners. The questions prepared by the state board of educational examiners, when received by the county superintendent, shall not be opened or the seal thereof broken until the day of examination and then in the presence of the applicants. And the county superintendent is prohibited from furnishing or giving to any person or persons any information concerning the questions prepared by the state board of educational examiners. Upon the completion of the examination, all papers written by the several applicants, together with statements covering such points in the candidates' preparation and experience as the state board of educational examiners may require and personal information or recommendations by the county board of educational examiners, shall be forwarded at once to the state board of educational examiners for grading.

2. If the attendance upon any examination of teachers at the county seat shall work a great hardship on any teacher in the county, the county superintendent, upon the approval of the state superintendent, may provide for such teachers to take the examination at some convenient place, and the county superintendent may appoint some suitable person to conduct such examination, under the rules and regulations prescribed by the state board of educational examiners.

3. *Grading of papers.* If the percentage of correct answers is not less than seventy per cent in any one branch with a general average of eighty per cent, and other evidence disclosed by the examination including particularly the state board's knowledge and information of the candidate's scholarship and successful experience, indicates that the applicant is a person of good moral character and possesses ability to manage, and fitness to teach in the public schools of the states the various branches required by law, said state board shall grant to such applicant a certificate of qualification.

Amd. Sec. 8, Ch. 131, L. 1923.

1092. Certificates—Kinds.

1. *Second grade.* To secure a second grade certificate no experience is required. Applicants for this grade must present evidence of good moral character and physical health and shall pass an examination in the following branches, or such additional branches as may hereafter be prescribed by the state board of educational examiners with the approval of

the state board of education; reading, writing, arithmetic, spelling, grammar, geography, physiology and hygiene, United States history, civics (state and federal), agriculture, and methods of teaching. Beginning September 1, 1924 the following subjects shall be added, school management and American literature, including literature for children in elementary schools. This certificate shall be valid for a period of twenty-four months and on being indorsed and registered in the office of the county superintendent, shall be valid in any county in the state.

2. *First grade.* To secure a first grade certificate, the applicant must present evidence of good moral character and physical health, must have had twelve months' successful experience as a teacher and must in addition to the branches required for a second grade certificate, take an examination in American literature, physical geography, elementary psychology and school management and such other branches as may be prescribed by the state board of educational examiners with the approval of the state board of education. Beginning September 1, 1924 physical geography, American literature, school management, and elementary psychology shall no longer be required for a first grade certificate and the following subjects shall be added: educational psychology, economics, school law and principles of education. This certificate shall be issued for a period of three years and shall be valid in any county on being indorsed and registered in the office of the county superintendent. After September 1, 1924 all first grade certificates whether newly issued or renewed shall be valid for four years from the date of issuance.

3. *Professional.* To secure a professional certificate the applicant must present evidence of good moral character and physical health, must have had at least eighteen months' successful experience as a teacher, and in addition to the branches required for a first grade certificate, must pass an examination in Montana school law, educational psychology, principles of education and such other branches as may be prescribed by the state board of educational examiners with the approval of the state board of education. This certificate shall be issued for a period of four years and shall be valid in any county on being indorsed and registered in the office of the county superintendent of schools. After September 1, 1924, the initial issuance of professional certificates shall be discontinued. The provisions of this section shall not affect the renewability of certificates already in effect on September 1, 1924.

4. *Permits.* The state board of educational examiners may grant a permit to teach until the next regular examination to any person applying at any other time than at a regular examination, and who has previously held a valid certificate to teach, or who has had training beyond high school graduation or who meets the minimum academic and professional prerequisites in effect when application is made, but such permit shall not be granted more than once to any person; provided, (1) that when it is impossible because of sickness or other valid reasons for such teacher to attend the next regular examination, such teacher shall certify the facts to the state board of educational examiners, together with the approval of the county superintendent of schools, and this board may issue a second permit valid until the next regular examination; provided, (2)

that the state board of educational examiners shall be authorized to provide special examinations for persons who do not or cannot take the regular examinations for the reasons stated above in which case the duration of the permit may be extended only until the time of said special examination, for which examination an extra fee of one dollar above the regular fee shall be paid into the state teachers' certificate fund.

5. *Temporary certificates.* When a teacher shows special fitness to teach and passes at the examination seventy per cent or above in all subjects but fails to make an average of eighty per cent, or secures an average of eighty per cent for all branches but fails to make seventy per cent in one or two branches, such teacher may, at the discretion of the state board of educational examiners, be issued a temporary certificate to teach until the next regular examination; and at such examination no teacher shall be required to be examined in any branch in which he has obtained a grade of eighty per cent in the aforementioned examination. Such temporary certificates shall not be issued to any teacher more than once.

6. *State certificates—How obtained.*

(a) *By examination.* A state certificate may be issued for a period of six years by the state board of educational examiners to any person of good moral character who has held for one year and still holds a Montana professional certificate in full force and effect, or a first grade certificate newly issued after September 1, 1924, or renewed thereafter, (provided the holder of the renewed first grade certificate writes upon and passes examination upon the additional subjects prescribed for first grade certificates after that date), when such person has passed a satisfactory examination under the direction of the state board of educational examiners, in English literature, history of education, and modern history, and has furnished satisfactory evidence of having taught successfully for thirty-five months.

(b) *By indorsement.*

(1) *State certificates issued by other states.* A state certificate may be issued in accordance with regulations established by the state board of educational examiners and approved by the state board of education to the holder of a state certificate issued by another state; provided, that such regulations shall not authorize the issuance of a state certificate to any person whose character, professional qualifications and experience are not at least substantially equivalent to those prescribed by this act for the issuance of a state certificate by examination.

(2) *Recognition of certificates issued by component institutions of University of Montana.* A diploma of the Montana State Normal College or of any normal school that may hereafter be established under the control of the state board of education, or a University of Montana certificate of qualification to teach when accompanied by a diploma either of the Montana State University or of the Montana State College of Agriculture and Mechanic Arts, shall constitute a state certificate good for six years after date; provided, that the rules of the faculties of the State University and of the State College of Agriculture and Mechanic Arts for the issuance of the University of Montana certificate of qualification to teach, as approved by the chancellor of the University of Montana, shall be submitted to the state board of

education for its sanction. A list of graduates receiving such certificates shall be filed in the office of superintendent of public instruction by the chancellor of the University of Montana within thirty days of issuance of said certificates.

(3) *Diplomas from other institutions.* A state certificate may be issued by the state board of educational examiners to a graduate of any other college, university, or normal school within or without the state in accordance with regulations established by said board and approved by the state board of education; provided, that such regulations shall not authorize the issuance of a state certificate to a graduate of any institution whose requirements for graduation are not substantially the full equivalent of those of the corresponding institution of the University of Montana; nor shall said certificate be granted to any such graduate whose preparation in professional courses is not equivalent to those required for the issuance of a state certificate from the corresponding institution of the University of Montana.

7. *Life certificates—How obtained.*

(a) *By examination.* A life certificate by examination may be issued by the state board of educational examiners upon the same conditions as a state certificate, except that, in addition, the applicant must pass satisfactory examinations and tests under such supervision and upon such additional subjects as may be prescribed by the state board of educational examiners with the approval of the state board of education, and must furnish satisfactory evidence of having taught successfully for seventy months providing: that an applicant who already holds an unexpired Montana state certificate obtained by examination shall be exempt from the examinations in the subjects required for state certificates.

(b) *By indorsement.* The state board of educational examiners may require, as a prerequisite for the granting of any life certificate by indorsement, evidence of the accomplishment of a minimum amount of reading circle work or other substantial improvement while in the service prior to the issuance thereof. Life certificates may be obtained by indorsement in the following ways:

(1) *Life certificates issued by other states.* A life certificate may be issued in accordance with regulations established by the state board of educational examiners and approved by the state board of education to the holder of a life certificate issued by another state; provided, that such regulations shall not authorize the issuance of a life certificate to any person whose character, professional qualifications, and experience are not at least substantially equivalent to those prescribed by this act for the issuance of a life certificate by examination.

(2) *Degrees and certificates of the University of Montana.* Any person holding a degree and certificate from the Montana State University or from the Montana State College of Agriculture and Mechanic Arts, and any graduate and holder of a certificate from the Montana State Normal College or from any normal school that may hereafter be established under the control of the state board of education, extending two or three years beyond the secondary school, shall be entitled to a life certificate

on presenting to the state board of educational examiners satisfactory evidence of having taught successfully in the state for twenty-seven months after graduation and during the life of said certificate.

(3) *Diplomas from other institutions.* A life certificate may be issued by the state board of educational examiners to a graduate of any other college, university, or normal school within or without the state in accordance with regulations established by the state board of educational examiners and approved by the state board of education, provided that such regulations shall not authorize the issuance of a life certificate to a graduate of any institution whose requirements for graduation are not substantially the full equivalent of those of the corresponding institution of the University of Montana, nor to anyone whose preparation in professional courses is not substantially equivalent to the certificate requirements of the corresponding institution of the University of Montana; and provided, further, that such regulations shall not authorize the issuance of a life certificate to any person who does not present satisfactory evidence of having taught successfully for at least as long a time after graduation as is required by law for the issuance of life certificates to graduates of the several institutions of the University of Montana.

8. *Temporary state certificate.* The state superintendent may grant a temporary state certificate, at any time to any teacher whose experience, qualifications and credentials, in his opinion, entitle such a teacher to either a state or life certificate in Montana. Such temporary state certificate shall be good and valid in any county in the state for a period of one year; provided, however, that the holder of such certificate shall have it duly registered in the office of the county superintendent of schools of the county in which he is employed to teach before he begins teaching, and provided, also, that such teacher shall pay the sum of three dollars (\$3) into the state teachers' certificate fund.

9. *Special certificates.* Upon the request of any board of school district trustees or its representatives or any county superintendent of schools, the superintendent of public instruction in accordance with regulations established by the state board of educational examiners, may grant without examination, a special certificate valid only in the district requesting the same, in music, art, public speaking, physical education, penmanship, manual training, home economics, agriculture, commercial and kindred subjects, first three-year primary, and kindergarten grades to any teacher who presents satisfactory evidence of special proficiency for teaching the above subjects, as shown by acceptable certificate or other credentials held by such teacher; provided, that such special certificate shall be valid for only one year, and, upon payment of one dollar (\$1) into the state teachers' certificate fund, shall entitle the holder to teach only such special subjects as are stated in said certificate; provided, that if the applicant continues teaching in the same district more than one year, upon the renewed application to the state board of educational examiners and upon the payment of a fee of three dollars (\$3) into the state teachers' certificate fund, said special certificate may become valid during the term of service in the same district.

1093. Classification and jurisdiction of certificates. 1. Nothing in this article shall be construed to affect the jurisdiction of certificates heretofore described and which are now in force or which shall be issued or renewed prior to September 1, 1924.

2. After September 1, 1924, all Montana second grade and Montana first grade certificates newly issued shall be valid in the public schools of Montana in grades one to eight, inclusive.

3. All state and life certificates described in the preceding sections and which shall be newly issued after September 1, 1924, shall be classified and have their jurisdiction determined in accordance with regulations established by the state board of educational examiners and approved by the state board of education on the basis of preparation as follows:

"Said state and life certificates newly issued after said date shall be classified as (1) Montana elementary state certificates and (2) Montana elementary life certificates; and (3) as Montana secondary state certificates; and (4) Montana secondary life certificates.

The Montana state and life elementary certificates shall be valid in grades one to ten, inclusive, and may have their jurisdiction extended to grades eleven and twelve by meeting the requirements of specialized preparation to be prescribed by regulations established by the state board of educational examiners.

Montana secondary state and Montana secondary life certificates shall be valid in grades five to twelve, inclusive, of the public schools of Montana, and said certificates may have their jurisdiction extended to grades one to four, inclusive, by meeting the specialized preparation to be prescribed by regulations established by the state board of educational examiners."

4. All state, life and professional certificates shall qualify the holder to act as supervisor over all grades of both elementary and high schools in third class districts provided that after September 1, 1924, the jurisdiction of said certificates in order to be valid in all third class districts must be extended by the holder by specialized preparation as prescribed in section 1093, paragraph 3 above. The requirements for administrative positions in first and second class districts as prescribed in section 982 of the Revised Codes of Montana 1921 shall not be affected by these provisions.

5. Upon all permits and certificates issued or renewed after September 1, 1924, the jurisdiction thereof shall be specifically stated for the information of principals, superintendents and boards of education.

Amd. Sec. 8, Ch. 131, L. 1923.

1094. Academic and professional preparation required as prerequisite for issuance of certificates. 1. From and after September 1, 1924, the minimum academic and professional preparation for the issuance of any certificate listed in the foregoing sections shall be graduation from a four year accredited high school or its equivalent and twelve quarter credits of professional training as defined in regulations to be established by the state board of educational examiners. After September 1, 1926, this minimum of academic preparation shall be graduation from a four year accredited high school or its equivalent and twenty-four quarter credits

of approved academic and professional preparation; and from and after September 1, 1929, said minimum shall be four years of high school preparation, or its equivalent and forty-eight quarter credits of approved academic and professional preparation. This law shall not be construed to prevent the renewal of any first grade, professional or state certificate issued prior to the passage of this act.

2. No state or life certificate shall be issued after September 1, 1924, to any teacher who does not have two years of college, normal school, or university training in addition to four years of high school preparation, or their equivalents. This shall not prevent the renewal of state certificates issued prior to the passage of this act.

Amd. Sec. 8, Ch. 131, L. 1923.

1095. Fees and Funds.

1. *Fees for certificates.* Applicants for any of the following grades of certificates shall pay to the county superintendent the fee attached thereto; the schedule of fees for lower grades of certificates shall be one dollar (\$1) for a second grade, two dollars (\$2) for a first grade and three dollars (\$3) for a professional grade of certificate. These fees shall be sent by the county superintendent to the state board of educational examiners to be deposited with the state treasurer in the state teachers' certificate fund. Fees for state and life certificates shall be fixed by regulation of the state board of educational examiners with the approval of the state board of education.

2. *State teachers' certificate fund.* All fees collected for certificates by the county superintendents, superintendents of public instruction and the state board of educational examiners shall be deposited with the state treasurer and kept in a fund to be known as the state teachers' certificate fund, and no claim shall be paid from this fund except upon warrants drawn by the state auditor upon claims approved by the state board of examiners and the superintendent of public instruction.

Amd. Sec. 8, Ch. 131, L. 1923.

1096. Recanvass of papers on appeal. Any candidate thinking an injustice has been done, by paying a fee of two dollars (\$2) into the state teachers' certificate fund within six months after the date of the examination and by notifying both county and state superintendents of the same, shall have his papers re-examined by the state board of educational examiners. The county superintendent shall upon receipt of such notice from said complaining candidate notify the superintendent of public instruction, who shall have the state board of educational examiners re-examine the same and if the answers warrant it, the state board of educational examiners shall issue to such complaining candidate a certificate of proper grade, and the superintendent of public instruction shall return the appeal fee of two dollars (\$2) to the teacher.

Amd. Sec. 8, Ch. 131, L. 1923.

1097. Revocation and suspension of certificates.

1. *Revocation of certificates.* The state board of educational examiners is authorized and required to revoke and annul, at any time any certificate

issued hitherto by the state board of education or state board of educational examiners, or which may hereafter be issued by the state board of educational examiners, for any cause which would have required or authorized either board to refuse to grant it if known at the time it was granted, and for incompetency, immorality, intemperance, physical inability, crime against the state law, refusal to perform duty or general neglect of the business of the school; but, before any such revocation, the holder shall be served by the superintendent of public instruction with a written statement of the charges against him, and shall have an opportunity for defense before the state board of educational examiners.

Any person whose certificate is revoked under the provisions of this section shall have the right to appeal within thirty days to the state board of education for a review of the record of his hearing before the state board of educational examiners. If, in the judgment of the state board of education, a miscarriage of justice has occurred, they shall order a rehearing of the case before the state board of educational examiners. The decision of the state board of educational examiners after such second hearing and their decision in all cases where appeal has not been made within thirty days as prescribed above, shall be final.

2. *Suspension and cancellation of teachers' certificates for violation of contract.* Should any teacher employed by a board of school trustees for a specified time, leave the school before the expiration of such time, without the consent of the trustees in writing, or without good cause in the judgment of the state board of educational examiners, said teacher shall be guilty of unprofessional conduct, and the state board of educational examiners may, upon receiving notice of such fact, and after making investigation of the circumstances thereof, suspend the certificate of such teacher for the remainder of that school year, or the next ensuing school year, or both. A second serious violation of contract by the same teacher shall, in the discretion of the state board of educational examiners, be deemed sufficient cause for the revocation of said teacher's certificate.

Amd. Sec. 8, Ch. 131, L. 1923.

1098. Renewals. Before the expiration of any state professional or first grade certificate, such certificate shall be renewed by the state board of educational examiners, upon the proper fee being paid into the state teachers' certificate fund, as provided for in section 1095 of this chapter and in the regulations established by the state board of educational examiners with the approval of the state board of education; provided (1) that no state certificate shall be renewed unless said applicant shall have taught successfully thereon for twenty-seven months during the life of said certificate, but renewal when made shall be for a period of six years from the date of renewal; and provided (2) that no professional or first grade certificate shall be renewed unless the applicant shall have taught successfully, as shown by two or more testimonials, at least twelve months during the life of such certificate; and provided (3) that the state board of educational examiners may require evidence of the accomplishment of a minimum amount of reading circle work or other evidence of professional

improvement as a prerequisite for the renewal of any certificate and provided (4) that there shall be no limit to the possible number of renewals.

Amd. Sec. 8, Ch. 131, L. 1923.

1099. Higher grade certificates—How secured. Whenever application is made by a holder of an unexpired state, professional, first or second grade certificate, for examination for a higher grade of certificate, and it shall be made to appear to the state board of educational examiners that such applicant has been engaged in teaching successfully, as shown by two or more testimonials, in any of the schools of the state, for a period of seventeen months or more during the life of a state or professional certificate, or for a period of twelve or more months during the life of a first or second grade certificate, the applicant shall be entitled to have credited on such higher certificate all grades of eighty per cent or above appearing on the unexpired certificate and shall not be required to be examined in any studies except the additional ones prescribed for such higher certificates and such studies listed upon his unexpired certificate showing a grade lower than eighty per cent.

All applicants seeking a higher grade of certificate as here prescribed shall also be subject to the academic requirements prescribed in section 1094 of this chapter after the dates stipulated therein.

Amd. Sec. 8, Ch. 131, L. 1923.

1100. University credits acknowledged. Any applicant for any grade certificate who has completed at any of the institutions of the University of Montana any branch for such certificate, shall upon filing with the state board of educational examiners a statement from the president of said institution to that effect, have such grade credited without examination on such certificate, provided that such grades may be applied toward another certificate of the same or a higher grade only when the applicant satisfies the state board of educational examiners that the teaching record of the applicant has been successful.

Amd. Sec. 8, Ch. 131, L. 1923.

1101. Existing certificates validated. Any person now holding a state, professional, a first grade or a second grade certificate, shall be permitted to teach thereunder during the life of such certificate.

Amd. Sec. 8, Ch. 131, L. 1923.

1102. Training of teachers.

1. *No discrimination against Montana trained teachers.* No certificate regulation shall be made requiring higher standards for Montana trained teachers than are required of teachers coming into Montana, but who were trained elsewhere.

2. *Normal training.* From and after the passage of this bill no person shall be given a regular certificate to teach who has not had at least nine weeks of normal training as defined in regulations adopted by the state board of educational examiners and approved by the state board of education.

Amd. Sec. 8, Ch. 131, L. 1923.

1103. Principals and high school teachers' certificates. No person shall be employed as a teacher in a high school or as the principal teacher of a school of more than three departments who is not the holder of a professional certificate, or a Montana state or life certificate, or who is not the graduate of some reputable university, college, or normal school recognized by the state board of educational examiners.

Amd. Sec. 8, Ch. 131, L. 1923.

1104. Types of certificates established for the purpose of articulating with neighboring states having similar types of certificates.

1. *Certifying authority.* All certificates authorized by this section shall be granted or indorsed by the state board of educational examiners in accordance with the provisions herein and regulations established in conformity herewith. Such regulations shall be formulated by the state board of educational examiners and approved by the state board of education before becoming operative.

2. *Essential features.* All essential features of these certificates, including academic and professional preparation, duration, jurisdiction, terms, and grades and credits (if certificates are granted wholly or in part upon the same), shall be placed upon, or attached to and made a part of, standard and limited certificates recognized in articulation, or granted under the provision of this section.

3. *Examinations.* Standard and limited certificates described herein may be granted upon examination to candidates who present satisfactory evidence of having the minimum academic, professional and other prerequisites therefor, as prescribed by law at the time of taking the examination. The subjects in which said candidates shall be examined shall be determined by the state board of educational examiners with the approval of the state board of education and published from time to time in the regulations governing examinations. The state board of educational examiners shall have full authority to accept in lieu of examinations in particular subjects, credits made in standard normal schools, colleges and universities accredited by the board, provided the credits are extensive enough and the grades high enough to indicate adequate knowledge of the subject. When certificates authorized in this section are granted upon examination, the questions shall be formulated, the examinations held, the papers graded and the certificates issued, or returns made, by the state board of educational examiners, or under regulations established by said board. The examinations shall be held at the same times and places as other Montana teachers' examinations.

4. *Certificates granted by recognition of credentials.* When certificates authorized by this section are granted upon the basis of credentials secured either within or without the state of Montana, such credentials shall be passed upon and evaluated by the state board of educational examiners and certificates issued only in conformity with the standards prescribed herein. Such credentials may consist of teachers' certificates from other states having standards equivalent to the certificates sought in Montana, or graduation diplomas and credits from standard institutions within or without the state. Certificates of health, character, American citizenship,

success and experience shall be required, and any other data which in the judgment of the board, shall be vital in the selection of capable teachers upon the basis of credentials presented. The state board of educational examiners shall give full credit and recognition to the diplomas and certificates meeting these standards and which are issued, or may have been issued heretofore, by the state higher educational institutions of Montana.

5. *Suspension or revocation.* The certificates prescribed in this section shall be subject to suspension or revocation by the authority issuing the same on the same conditions and for the same causes as any other teachers' certificates issued in Montana.

6. *Kinds of certificates authorized for the purpose of articulating with neighboring states.* The kinds of certificates authorized under the provisions of this section for the purpose of articulating with neighboring states, are as follows:

A. *Standard certificates:* (1) Standard high school certificates which shall be classified as standard two-year, five-year and life high school certificates.—These certificates shall be valid in grades 7 to 12, inclusive, in the public schools of Montana. Candidates for these certificates must be graduates of a four-year accredited high school, or its equivalent, and in addition, they must be graduates of an accredited four-year standard college or university. A minimum of fifteen semester credits in education (general psychology being a prerequisite) is also required of all candidates. A course in practice teaching should be included in the credits in education.

For each type of standard high school certificate the prerequisites shall be the same except for the amount of successful teaching experience. The holder of the two-year standard high school certificate shall be eligible for the five-year high school certificate after teaching successfully for fourteen months within the state during the life of the two-year certificate. The holder of a five-year standard high school certificate shall be eligible for the life standard high school certificate after teaching twenty-eight months successfully within the state, fourteen of which shall have been on the five-year standard high school certificate. In all cases the state board of educational examiners shall determine whether or not the experience has been successful. Short term certificates may not be displaced by long term certificates when teaching experience has been unsuccessful. Where doubt exists the board shall use its discretion in granting or renewing certificates. Two-year and five-year standard high school certificates are renewable once in the discretion of the state board of educational examiners.

(2) Standard elementary certificates, which shall be classified as standard two-year, five-year and life elementary certificates.—These certificates shall be valid in grades 1 to 9, inclusive, in the public schools of Montana. Candidates for any standard elementary certificates must be graduates of a four-year accredited high school, or its equivalent, and, in addition, must have had two years of approved academic and professional preparation in an accredited institution of higher learning. A minimum of fifteen semester credits in education or professional study should be included in the preparation.

For each type of standard elementary certificate the prerequisites shall be the same except for the amount of successful teaching experience. The holder of a two-year standard elementary certificate shall be eligible for a five-year standard elementary certificate after teaching successfully for fourteen months within the state during the life of the two-year certificate. After twenty-eight months of successful teaching experience within the state, fourteen months being during the life of the five-year certificate, the holder of a five-year standard elementary certificate shall be eligible for a life elementary certificate. Standard two-year and five-year elementary certificates are renewable once in the discretion of the state board of educational examiners. The state board of educational examiners shall in all cases determine whether or not experience has been successful and shall issue, renew, or withhold certificates according to the success or failure of the candidates.

B. *Limited certificates.* These certificates shall be granted upon satisfactory examination to persons meeting the minimum prerequisites stipulated in subsections 7 and 8 below of this section. The kinds of limited certificates authorized are:

(a) Second grade, valid in grades 1 to 8 inclusive, of the public schools of Montana for a period of two years. No experience is required. Candidates must be graduates of a four-year accredited high school, or have its equivalent, and, in addition thereto, have had twelve quarter credits of approved professional training obtained in residence at an institution of higher learning accredited by the state board of educational examiners. This certificate may be renewed once without examination, provided the holder fulfills the minimum prerequisites requirements prescribed by law and in effect at the time such renewal is made; and provided further, that the teaching experience of the candidate has been, in the judgment of the state board of educational examiners, successful.

(b) First grade, valid in grades 1 to 8 inclusive, of the public schools of Montana for the period of five years. Candidates for this certificate must have had fourteen months of successful teaching experience. This certificate is renewable indefinitely provided the candidate meets the minimum academic and professional requirements established by law and in effect at the time each renewal is made, and by teaching successfully twenty-one months during the life of the original certificate and each renewed certificate. Successful experience shall be determined by the state board of educational examiners as in the issuance of other certificates.

7. *General prerequisites established for limited certificates and for standard elementary and high school certificates.* None of these types of certificates shall be granted to any person who does not meet these prerequisites:

- (a) Full citizenship.
- (b) Minimum age of eighteen years.
- (c) Satisfactory evidence of good moral character.
- (d) Certificate of good health from a reputable physician.

8. *Minimum academic and professional prerequisites for the issuance of any limited certificates.* The minimum academic and professional pre-

requisites for the issuance of any limited certificate described herein shall be as follows:

(a) After September 1st, 1923, no limited certificate shall be issued to anyone who is not a graduate of a four-year accredited high school, or its equivalent, and who does not have in addition thereto, twelve quarter credit hours (eight semester hours) of approved professional training acquired in residence at an institution of higher learning accredited by the state board of educational examiners.

(b) After September 1, 1924, candidates for limited certificates must be graduates of a four-year accredited high school, or its equivalent, and in addition thereto shall have had twenty-four quarter credits of approved academic and professional preparation acquired in residence at an accredited institution of higher learning.

(c) After September 1st, 1925, candidates must be graduates of a four-year accredited high school, or its equivalent, and have had in addition one year of approved academic and professional preparation in residence at an accredited institution of higher learning.

(d) After September 1st, 1926, candidates must be graduates of a four-year accredited high school, or its equivalent, and have had two years of approved academic and professional preparation (at least one-half of which shall have been obtained in residence) at an accredited institution of higher learning.

9. The holder of any standard certificate shall be eligible to hold any supervisory position in third class districts; and shall be eligible for administrative and supervisory positions in first and second class districts provided he shall have had the successful teaching experience prescribed in section 982 of the Revised Codes of Montana, 1921.

10. *Fees and appeal for re-reading of papers.* Applicants for standard and limited certificates described above, shall pay at the time examinations are taken or credentials submitted, the fee fixed for the particular certificate sought. Fees for such certificates shall be as follows:

Second and first grade limited certificates, one dollar (\$1) and three dollars (\$3), respectively;

Standard elementary two-year, five-year and life, two dollars (\$2), five dollars (\$5), and ten dollars (\$10), respectively;

Standard high school two-year, five-year and life, two dollars (\$2), five dollars (\$5) and ten dollars (\$10), respectively;

The fee for re-reading of papers on appeal from any examination papers shall be two dollars.

When application is made for certificate by examination, the fees shall be paid to the county superintendent at the time of taking the examination, and said fee shall be forwarded by the county superintendent to the state department of public instruction to be deposited with the state treasurer in the state certificate fund. When a certificate is sought upon presentation of credentials in lieu of examination, the fee shall be paid directly to the state superintendent and the same deposited with the state treasurer in the state teachers' certificate fund. Fees for re-reading papers shall be placed in the same fund. No refunds will be made to those who fail to pass examinations, or who are lacking in the

necessary prerequisites, credentials or vital data required by law; nor shall any refund be made to persons whose credentials are unsatisfactory for the purpose of securing a certificate by indorsement. Persons failing in examination shall have the same right to appeal for re-reading of their papers as in the case of other Montana certificates and on the same conditions.

11. *Registration.* The holder of either a standard or limited certificate shall register the same in the county where he teaches not later than ten days after he begins to teach.

12. *Definition of terms.* The state board of educational examiners shall have full authority to define the terms "academic" "professional" and "equivalent" in the regulations to be issued in conformity with the provisions of this section.

Amd. Sec. 8, Ch. 131, L. 1923.

CHAPTER 88.

TEACHERS' RETIREMENT SALARY FUND.

1116. **Monthly contributions to permanent fund.** There shall be deducted from the salary of every teacher subject to the provisions of this act, one dollar (\$1) from the compensation paid to such teacher for every month, not to exceed, however, nine (9) in any one calendar year, for which such teacher receives compensation, and it shall be the duty of the clerk of the board of trustees for the school district in which such teacher is employed to make said deductions at the time of the payment of such teacher's compensation and at the end of each quarter to draw a warrant in favor of the state treasurer for the amounts deducted, and promptly forward the same to the state treasurer. The amounts thus deducted shall be deposited in the state treasury to the credit of the public school teachers' permanent fund, and shall constitute a part thereof. It further shall be the duty of said clerk of the board of trustees to quarterly transmit to the public school teachers' retirement salary fund board a list of teachers employed in the said school district together with a statement of the respective amounts paid by said teachers into the public school teachers' permanent fund for the quarter covered by said report.

Amd. Sec. 1, Ch. 150, L. 1927.

Validity of statute providing for pensions for teachers, note, 37 A. L. E. 1162.

For text treatment of this subject see
vol. 23 Cal. Jur. 123.

1116A. **Penalty for failure of clerk to make deductions or report.** Any clerk of any board of trustees of any school district or the county clerk and recorder of any county within the state of Montana, who fails to make the deductions provided for herein, or fails to promptly transmit the warrant or warrants covering said deductions to the state treasurer or fails to render the quarterly report to the public school teachers' retirement salary fund board as provided herein, shall be guilty of a misdemeanor and upon conviction thereof, shall be punished by a fine of not

less than ten dollars (\$10), nor more than one hundred dollars (\$100) for each violation.

En. Sec. 2, Ch. 150, L. 1927.

1117. Condition for obtaining benefits of law. No person shall be eligible to receive the benefits of this act, who shall not have paid into said public school teachers' permanent fund the sum of six hundred dollars (\$600) in the manner and form as in this act provided; provided, however, that the difference between the amount actually paid by such teacher of thirty years' service and six hundred dollars (\$600), may be paid into such fund by such teacher at the time of retirement, with the same effect as if the full sum of six hundred dollars (\$600) had been paid before retirement in the manner and form provided in this act.

And provided further that any teacher now receiving the benefits provided by this act or who has been placed upon the eligible list and is entitled to the benefits provided by this act, shall be entitled to all the benefits of this act, as amended, without any further act or qualifications on his or her part; provided that no person shall receive beneficiary funds from this act who is receiving from other sources as much as two thousand dollars (\$2,000) per annum.

Amd. Sec. 3, Ch. 150, L. 1927.

1118. Retirement salary fund board—Membership. The superintendent of public instruction, the treasurer, the attorney general of the state of Montana, and two teachers legally qualified and actually engaged in classroom teaching in public, state or county schools in the state of Montana, and who are contributors to the public school teachers' permanent fund under section 1116, to be appointed by the governor, shall constitute the public school teachers' retirement salary fund board. The term of office of the appointive members of said board shall be two years, except as provided herein, and shall begin on the first day of July, next succeeding their appointment; provided that the terms of office of the first members appointed shall be one for a period of one year and one for a period of two years. In case any vacancy occurs among the appointive members of said board, said vacancy shall be filled immediately by the governor and the appointee shall serve the balance of the term for which the original member was appointed. Members of said board shall receive no compensation except their necessary traveling expenses incurred in attending meetings of the board, to be paid from the public school teachers' retirement fund upon the certificate of the chairman and secretary of said board.

Amd. Sec. 4, Ch. 150, L. 1927.

1121. Place of meeting—Additional help, stationery, etc. The said public school teachers' retirement salary fund board shall hold its meetings at the office of the state superintendent of public instruction. It shall be entitled to the use of the offices of the said state superintendent, and the board is empowered to employ such additional help and make such expenditures for stationery, stamps, etc., as may be necessary for the

creation, maintenance, and enforcement of this act, which shall be a legal charge against the public school teachers' retirement salary fund and shall be paid therefrom.

Amd. Sec. 1, Ch. 86, L. 1927.

1124. Duty of county and state superintendent — Warrants. The county superintendent shall report to the state superintendent of public instruction, before the fifteenth day of July of each year, the names of all persons claiming and the amount that will be required during the current fiscal year to pay the retirement salaries to be paid in such district or county, together with a statement of the teachers employed in such district or county who are subject to the deductions provided by section 1116, and said state superintendent of public instruction shall determine from said reports and statements the entire amount required to pay said retirement salaries during said fiscal year and the entire amount of probable revenue to be derived from the source mentioned in section 1113. He shall report the amount required to make such payments to the public school teachers' salary fund board, together with a statement of the probable revenue to be derived from the various sources during the fiscal year, and thereupon after verifying or correcting same, said board shall notify the state treasurer, and by resolution, duly adopted, shall direct him to make transfer of the needed amount from the public school teachers' permanent fund to the public school teachers' retirement salary fund, provided, however, that the board shall not direct a transfer of an amount in excess of the amount of probable revenue to be received into the public school teachers' permanent fund during said fiscal year from the sources mentioned in section 1113, it being the intention of this act, in the event the revenue received into the public school teachers' permanent fund during the fiscal year is not sufficient to pay those entitled to the benefits of this act the full amounts provided in sections 1125 and 1126, that the amount of revenue received into the said public school teachers' permanent fund for said fiscal year shall be prorated to those entitled to the benefits of this act in proportion to their respective interests for said fiscal year.

Amd. Sec. 5, Ch. 150, L. 1927.

1125. Persons entitled to, and amount of retirement salary. Every public, state or county school teacher who shall have attained the age of fifty-five years and who shall have served as a legally qualified teacher in public, state or county day or evening schools, or partly as such teacher and partly as state or county or city superintendent or supervising executive or educational administrator for at least thirty school years, at least fifteen of which shall have been in the schools, as hereinbefore specified, of this state, including the last ten years of actual service, unless leave of absence shall have been granted by proper school authorities, shall be entitled to retirement, no time included in such leave of absence to be reckoned as time of service. Upon retirement such teacher shall be entitled to receive during life an annual retirement salary of six hundred dollars (\$600), subject to the provisions and limitations of section 1124, payable in installments quarterly by warrants drawn as provided in this

act; provided, the teachers in the service of the state at the time of the passage of this act, who shall have served in states other than this, shall, at the end of thirty years' service, the last ten years of which shall be in this state as hereinbefore provided, be entitled to the benefits of this act.

Amd. Sec. 6, Ch. 150, L. 1927.

For text treatment of this subject see vol. 23 Cal. Jur. 123.

1126. Retirement by reason of bodily or mental infirmity. Any legally qualified public, state or county school teacher, who shall have served as such or in the capacity of school officer, as hereinbefore specified, for at least fifteen school years in the public schools or school offices as specified above, of this state, and who shall, by reason of bodily or mental infirmity, have become physically or mentally incapacitated for further service, shall be entitled to retire, or may, by the board of education, school trustees or other school authorities employing such teacher, be compelled to retire. Upon such retirement, voluntary or involuntary, such teacher shall be entitled to receive, during the period of such disability, an annual retirement salary, which shall bear the same proportion to six hundred dollars (\$600) as is borne by the number of years of said teacher's time to thirty years, subject, however, to the provisions and limitations of section 1124.

Amd. Sec. 7, Ch. 150, L. 1927.

1127. Determination of school year for purposes of computation. In counting the actual time of service for the purpose of this act, the public school teachers' retirement salary fund board shall determine what constitutes a school year; provided, that no credit upon the requisite thirty years' service contemplated by this act, shall be allowed for more than one school year's service during any calendar year.

Amd. Sec. 8, Ch. 150, L. 1927.

CHAPTER 94.

SCHOOLHOUSE SITES AND CONSTRUCTION.

1173. Selection.

Cited in *State ex rel. Hessler v. District Court*, 64 Mont. 296, 300, 209 Pac. 1052.

CHAPTER 96.

TEXT-BOOKS.

1189. Meetings of commission. The state text-book commission shall meet in the state capitol in the city of Helena, on the second Monday in December, 1926, and every second year thereafter, and the president of said commission shall call a meeting thereof on the third Saturday of September, 1926, and every second year thereafter for the purpose of considering in what subjects, if any, as hereinafter provided text-books shall be changed, and expiring contracts extended; provided, that changes shall not be made in the text-books of more than three subjects at any meeting.

He must also upon ten days' written notice to the members to be given by the secretary, call a meeting of the commission at any time to receive proposals and to enter into contracts with publishers for supplying text-books whenever contracts for certain books heretofore entered into become terminated by rescission or otherwise cease to be in full force and effect, and to adopt additional supplementary books whenever it is deemed for the best interests of the schools of the state. Said text-book commission may adjourn from day to day until it shall have made adoptions as provided for in this chapter. The session of said commission shall not continue beyond six actual days, and nothing herein contained shall be so construed as to have any reference to the provisions of this act relating to school libraries.

Amd. Sec. 1, Ch. 25, L. 1925.

1190. Contracts for supplying text-books. Beginning with October 1, 1926, and every second year thereafter, the superintendent of public instruction shall, if any changes have been recommended, advertise for five days in two daily newspapers in this state, giving notice that the text-book commission will meet, as herein provided, and that it will receive sealed proposals up to twelve o'clock noon, of said second Monday in December next following, for supplying the state of Montana with such basal and supplementary text-books as the commission has considered desirable to be changed, for use in all the public schools of said state, for a period of six years from and after the first day in September, 1927; and all contracts under this act shall further provide that they may be extended after their expiration at the option of the commission, and at not to exceed the schedule of prices agreed upon therein; and the contracts in existence at the time of the passage of this act may be extended after expiration for not to exceed four years, at the option of the commission and not to exceed the schedule of prices agreed upon therein. The commission shall make contracts for text-books in the following branches, to wit: Reading, spelling, writing, arithmetic, geography (elementary and advanced), language and grammar, physiology and hygiene, civil government (state and national), history of the United States (elementary and advanced) and elementary agriculture.

Said commission is hereby empowered to adopt such other text-books supplementary to the basal text-books above referred to as it may deem advisable. But no supplementary text-books shall be used in any of the schools in this state except in connection with and supplementary to the basal text-books adopted by the said state text-book commission as provided in this act. Said sealed proposals shall be addressed to the chairman of the state text-book commission, Helena, Montana, and shall be indorsed "Sealed proposals for supplying text-books for use in the state of Montana." Said proposals shall state the net wholesale price at which the publishers whose books may be adopted by the state text-book commission, will agree to deliver the same in the city of Chicago, Illinois, f. o. b. to merchants in Montana, or to school districts purchasing same or f. o. b. text-book depositories in Montana. They shall also state the introductory price without exchange, and the exchange price for new books adopted in

exchange for the old books in the hands of the pupils, and for the new books in the hands of the districts or dealers, which may be displaced, grade for grade; provided that when pupils own their books they may exchange one of a lower grade for one of a higher; and shall further state the retail price at which they will keep all the text-books so adopted on sale uniformly in at least one place in each county throughout the state. Whenever any contract shall be terminated by rescission, or shall otherwise cease to be in force and effect, the state text-book commission shall, within ten days after the termination of such contracts, advertise in the same manner and for the same length of time as elsewhere mentioned in this section for proposals to furnish text-books on the same subjects as those embraced within such contract for the same length of time, and bids shall be received in the same manner as hereinbefore provided. The publishers contracting and agreeing to supply text-books for use in the state of Montana under the provisions of this act, shall cause to be prepared a special map and special supplement descriptive of Montana for the geography adopted by said commission. They shall also cause to be prepared a special supplement for Montana for the civil government adopted, which supplement shall contain not less than one hundred pages. They shall further agree to maintain the mechanical excellence of the books adopted by said commission fully equal to the samples submitted in binding, quality of paper, and other essential features.

Amd. Sec. 2, Ch. 25, L. 1925.

For text treatment of this subject see vol. 23 Cal. Jur. 123.

1198. Free text-books to be provided.

Cited in *Mills v. Stewart*, 76 Mont. 429, 443, 247 Pac. 332.

1199. Estimate and levy of tax for free text-books. For the purpose of raising money to pay for free text-books, it shall be the duty of the trustees of each school district, on or before the first day of July of each year, to certify to the county commissioners of the county wherein said school district is located, an estimate of the amount of money required to provide said free text-books for the ensuing school year; thereupon, in case the money received from the general fund of the district be insufficient for said purpose, said board of county commissioners shall levy a special tax upon the taxable property of said district for the purpose of providing said free text-books; said tax shall be collected in the same manner and at the same time as other taxes are collected, provided, however, that no greater levy shall be made than is sufficient to raise an amount not in excess of three dollars and fifty cents (per pupil) and that such total amount be based upon the average number of pupils attending school for the preceding school year.

Amd. Sec. 1, Ch. 88, L. 1925.

Free text-books, note, 17 A. L. E. 299.

CHAPTER 97.

FINANCE.

1201.1. State common school equalization fund. That the "inheritance tax fund" provided for by section 23 of chapter 65 Session Laws of the Eighteenth Legislative Assembly; all moneys acquired from the sources referred to in sections 1211 and 1212 Revised Codes of Montana of 1921 as amended by chapter 104 Session Laws of the Eighteenth Legislative Assembly, being moneys received by the state of Montana from the treasurer of the United States under the provisions of the act of congress of February 25, 1920; being federal oil and gas royalties; all moneys acquired from the oil license tax and credited to the common school interest and income fund under the provisions of sections 2398 and 2399 Revised Codes of Montana of 1921 as amended by chapter 67 Session Laws of the Eighteenth Legislative Assembly; and all moneys acquired from the provisions of Initiative Measure No. 28, known as the metal mines tax, and allotted to the common school interest and income fund under section 12 of said Initiative Measure No. 28, be, and the same hereby are transferred to a fund to be known as the state common school equalization fund, and the state auditor and state treasurer are hereby directed to set up such fund on their respective books and transfer thereto all moneys now in, or hereafter received for the credit of the several funds above enumerated.

En. Sec. 1, Ch. 119, L. 1927.

1201.2. Common school equalization board. The state board of education is hereby declared to be the common school equalization board to administer and distribute said state common school equalization fund in the manner and with the powers and duties in this act provided.

En. Sec. 2, Ch. 119, L. 1927.

1201.3. Equalization of educational program. The state board of education, at its meetings to be held in the months of July and December in each year, shall determine the minimum educational program which shall be equalized, and in determining such educational program shall consider the following factors, viz.: the minimum length of school term, the minimum school tax levy, the assessed maximum valuation per child in average daily attendance, the minimum enrollment and such other factors as said board may determine to be necessary for the purpose of carrying out the provisions of this act; provided, that aid from such state common school equalization fund may be given to school districts with certain low enrollment, in case children belonging thereto are placed in school in other districts, and in case such districts meet all other requirements fixed and determined by said board as conditions for such state aid. The state board of education, acting as such common school equalization board shall have the power to require such reports from county superintendents of schools, county treasurers, and school trustees as it may deem necessary and shall provide rules and regulations for the purpose of carrying out the provisions of this act and providing, as nearly as possible and as far as

the said fund will allow, nine months schooling each year for every child in the common schools of this state.

En. Sec. 3, Ch. 119, L. 1927.

1201.4. Distribution of funds. The state board of education, acting as such common school equalization board, shall at the meeting above provided for certify to the state auditor and state treasurer the distribution of the funds available in the state common school equalization fund, and the state auditor shall thereupon draw his warrant and the state treasurer shall pay the same to the several school districts so certified by said board.

En. Sec. 4, Ch. 119, L. 1927.

1205. Purposes for which money may be used.

This section, providing that where school funds are illegally expended by authority of the board of trustees, a tax-paying elector may bring suit against the members thereof who consented to the payment, to make restitution for the benefit of the district, affords the plaintiff a plain, speedy and adequate remedy at law, and injunction does not lie to restrain payment of an alleged illegal claim, unless the trustees or those as-

senting to payment are insolvent, in which event the complaint must allege their insolvency. *State ex rel. Stephens v. Zuck et al.*, 67 Mont. 324; 215 Pac. 806.

Cited in *Gregg v. Bayers*, 73 Mont. 165, 168, 235 Pac. 337; *Stange v. Esval et al.*, 67 Mont. 301, 307, 215 Pac. 807.

Power to require construction or repair of school buildings, note, 1 A. L. R. 1559.

1211. Manner of apportionment and distribution. All sums of money derived from any and all bonuses, royalties, and rentals paid into the treasury of the United States on account of any permits or leases granted by the government of the United States as provided by the act of Congress of February 25, 1920, and paid by the secretary of the treasury of the United States to the state of Montana, shall, within thirty days after being received by the state of Montana, be apportioned and distributed by the state treasurer as follows: One-half thereof shall be deposited to the credit of the state highway fund, and the other one-half thereof shall be apportioned between and distributed and paid over to the several counties of the state in proportion to the total number of teaching positions, in which teachers were employed for a period of at least four months, in each county during the school year ending June 30th immediately preceding, as shown by the statements and certificates of the county superintendents of schools filed with the state treasurer for such school year, and such state treasurer must, at the time of making such apportionment and distribution notify the county superintendent of schools of each of the several counties of the amount so apportioned and distributed to each county. Within ten days after receiving such notice from the state treasurer each county superintendent of schools must apportion the amount received and paid over to his county by the state treasurer in the following manner, to wit: (a) Sixty per centum (60%) thereof shall be apportioned between and among the several school districts, district high schools and county high schools in proportion to the total number of teaching positions, in which teachers were employed for at least four months during the last preceding school year for which a statement and certificate was

filed with the state treasurer by the county superintendent of schools in each such school district, district high and county high school; (b) thirty-five per centum (35%) thereof shall be apportioned between and among the several school districts, district high and county high schools in proportion to the aggregate number of days' attendance of all eligible pupils who attended for a period of not less than six weeks during the aforesaid school year in each district school, district high and county high school; (c) five per centum (5%) thereof shall be apportioned between and among the district high schools and county high school in proportion to the number of years of accredited high school work during the aforesaid school year in each such district high and county high school. Immediately after making such apportionment the county superintendent of schools must make and file with the county treasurer a statement and certificate showing the total amount apportioned to each school district, district high and county high school, and the county treasurer must, on receiving such statement and certificate, immediately credit the general fund of each school district, district high and county high school with the amount to which each is entitled as shown by such statement and certificate, and such amounts shall be expended for the same purpose for which other moneys deposited to the credit of such funds may be expended, and for no other purpose.

Amd. Sec. 1, Ch. 104, L. 1923.

1212. Statement by county superintendent. The county superintendent of schools of each county in the state must, between the fifteenth day of August and the first day of September, in each year, make and file with the state treasurer a statement and certificate showing the total number of teaching positions, in which teachers were employed for a period of at least four months, during the school year ending June 30th immediately preceding, in all of the public schools in such county, including kindergarten, primary, grade, district high and county schools, provided, however, that if during such school year, or after the close thereof and before the making of such statement and certificate, any portion of a county has been detached therefrom and added to another county, or detached therefrom and included in a new county, the number of teaching positions within the portion of such county so detached shall not be included in the statement and certificate of the county superintendent of schools of the county to which the same is attached, or in the statement and certificate of the county superintendent of schools of the new county.

Amd. Sec. 1, Ch. 104, L. 1923.

1213. Duties of county treasurer.

The effect of the provision of this section requiring the county treasurer to keep school moneys as a "special deposit" is not to make the county a bailee thereof in the sense of a deposit for their safekeeping, they to be returned to the school district when called for, but is to constitute the deposit a

general one which, however, must be kept in a special account for school purposes. *State v. McGraw*, 74 Mont. 152, 240 Pac. 812.

For text treatment of this subject see vol. 23 Cal. Jur. 74.

1215. County clerk to report valuation of school districts. The county assessor of each county in the state must, at the time of delivering

the completed assessment-book to the county clerk of his county, as required by section 2052, also deliver to such county clerk a statement showing separately, for each school district in his county, the total full and true value of each and every class of property as the same appears in such completed assessment-book.

The county clerk of each county in the state must, each year and within ten (10) days after receiving from the state board of equalization the assessments of all property in his county made by such state board of equalization for such year, make out a report, in duplicate, showing for each school district in his county the following: (a). The total full and true value of all taxable property therein as shown on the assessment-book for such year; (b). The total basis for taxation (being the total percentage of value, or amount on which taxes are to be computed) of all taxable property therein for such year. One of such copies must be, within such time, delivered by the county clerk to the county superintendent of schools of the county, and the other thereof delivered to the board of county commissioners if in session, and if not in session, then to such board at the first session thereof held thereafter.

In the case of a joint school district the county clerk must at the same time make copies of so much of such report as relates to such joint school district, and must, at the time of delivering such report to the county superintendent of schools of this county, transmit one of such copies to the county superintendent of schools and one thereof to the board of county commissioners of each other county in which any part of the joint school district is situated.

Amd. Sec. 1, Ch. 14, L. 1923; Amd. Sec. 1, Ch. 62, L. 1925.

CHAPTER 98.

EXTRA TAXATION FOR SCHOOL PURPOSES.

1219. District school taxes in excess of ten mills—Election. Whenever the board of trustees of any school district shall deem it necessary to raise money by taxation in excess of the ten mill levy now allowed by law for the purpose of maintaining the schools of said district, or building, altering, repairing, or enlarging any schoolhouse or houses of said district, for furnishing additional school facilities for said district, for building and equipping heating or other plants for said district, or for any other purposes necessary for the proper operation and maintenance of the schools in said district, it shall, submit the question of such additional levy to the legal voters of said district, who are tax-paying freeholders therein, either at the regular annual election held in said district, or at a special election called for that purpose by the board of trustees of said district, provided, that in all school districts of the third class such question may be submitted to the legal voters of said district, who are taxpayers therein.

Amd. Sec. 1, Ch. 120, L. 1925.

1223. Challenging voters — Oath of elector — False swearing. Any person offering to vote may be challenged by any elector of the district, and the judges must thereupon administer to the person challenged an oath or affirmation, in substance as follows:

"You do solemnly swear (or affirm) that you are a citizen of the United States; that you are twenty-one years of age; that you have resided in this state one year and in this school district thirty days next preceding this election; that you are a taxpaying freeholder on the last assessment-roll from this school district; and that you have not voted this day. So help you God."

In all districts of the third class, in administering said oath or affirmation, the judges must substitute the word "taxpayer" for the words "taxpaying freeholder." Said oath shall be reduced to writing and signed by the person challenged and sworn to before one of the judges of election. Said oath or affirmation shall be returned with the ballots cast at such election. If the voter takes oath or affirmation, his vote must be received; otherwise, it will be rejected. Any person who shall swear falsely before any such judge of election shall be guilty of perjury, and shall be punished accordingly.

Amd. Sec. 2, Ch. 120, L. 1925.

CHAPTER 99.

BONDS.

1224. Issuance of bonds—Submission of question to electors—Limit.

Rep. Sec. 34, Ch. 147, L. 1927. as chapter 76, L. 1913, page 285, in
This and following sections relating Keeler Bros. v. School Dist. No. 3, 62
to issuance of school bonds were cited Mont. 356, 361, 205 Pac. 217.

1224.1. Boards of trustees of school districts may issue coupon bonds for certain purposes. The board of trustees of any school district within this state is hereby vested with the power and authority to issue and negotiate coupon bonds on the credit of the school district for any one or more of the following purposes:

(a). For the purpose of building, enlarging, altering, repairing, or acquiring by purchase one or more schoolhouses in said district; furnishing and equipping the same, and purchasing the necessary lands therefor.

(b). For the purpose of constructing or acquiring by purchasing one or more teacherages in said district, furnishing and equipping the same, and purchasing the necessary lands therefor.

(c). For the purpose of constructing or acquiring by purchasing one or more dormitories in said district, furnishing and equipping the same, and purchasing the necessary lands therefor.

(d). For the purpose of constructing or acquiring by purchasing one or more gymnasiums in said district, furnishing and equipping the same, and purchasing the necessary lands therefor.

(e). For the purpose of securing a water supply for the use of one or more of the schools of the district.

(f). For the purpose of providing the necessary funds to pay the indebtedness duly apportioned to the school district upon its creation from territory formerly belonging to another district or districts, and represented by outstanding warrants or otherwise, or upon its separation from another district or districts, or upon the re-arrangement of the boundary line or lines between such district and another district or districts.

(g). For the purpose of providing the necessary funds to pay and redeem optional or redeemable bonds when it is deemed to be for the best interests of the school district to issue refunding bonds, or for the purpose of providing the necessary funds to pay and redeem matured or maturing bonds when there are not sufficient funds available for the payment and redemption thereof.

En. Sec. 1, Ch. 147, L. 1927.

For text treatment of this subject see vol. 23 Cal. Jur. 54 et seq.

1224.2. Limitations on amount of issue. The maximum amount for which any school district shall be allowed to become indebted by the issuance of bonds, or otherwise, including all indebtedness represented by outstanding warrants and outstanding bonds of previous issues, or unpaid balances thereon, is hereby fixed at three per centum (3%) of the value of the taxable property therein to be ascertained by the last completed assessment for state, county and school taxes previous to the incurring of such indebtedness. The words "value of the taxable property therein" as used herein shall be given the same meaning and construction and are used in the same sense as in section six of article thirteen of the state constitution. All bonds issued in excess of such amount shall be null and void.

Whenever bonds are issued for the purpose of paying the redeeming bonds previously issued, or any unpaid balance thereon, all sinking and interest funds applicable toward the payment of such bonds shall be applied to such purpose and the refunding bond issue shall be decreased accordingly.

En. Sec. 2, Ch. 147, L. 1927.

1224.3. What forms of bonds may be issued. All bonds hereafter issued by any school district in this state shall be amortization bonds, if bonds in this form can be sold and disposed of at a reasonable rate of interest. If amortization bonds cannot be sold and disposed of at a reasonable rate of interest advantageous to the people for whose benefit the same are issued, then in such case serial bonds may be issued in place of amortization bonds.

The term "amortization bonds," as used in this act, is hereby defined as meaning that form of bonds on which a part of the principal is required to be paid each time interest becomes due and payable, which part payment on the principal increases at each succeeding installment in the same amount that the interest payment decreases, so that the combined amount due on principal and interest on each succeeding due date remains the same until the bonds are fully paid; provided, however, that the final payment may vary in amount from the other payments to the extent resulting from disregarding fractional cents in the other payments.

The term "serial bonds," as used in this act, is hereby defined as being a bond issue payable in equal annual installments, one installment, consisting of one or more bonds, becoming due and payable each year, the amount to be paid and redeemed each year being determined by dividing the total amount of the bonds to be issued by the total number of years the issue is to run; provided, however, that the installment becoming due

and payable the last year may vary in amount from the others to the extent resulting from fixing the amount of each bond of the other installments at the nearest practical multiples of ten dollars (\$10).

En. Sec. 3, Ch. 147, L. 1927.

1224.4. Term of issue, redemption and interest. No school district bonds shall be issued for a longer period than twenty (20) years, and shall be redeemable five (5) years from date of issuance, and on any interest due date thereafter, and such redemption right must be stated on the face of each bond; providing that bonds issued to refund or redeem any outstanding bonds shall not be issued for any period in excess of ten (10) years. The interest shall not exceed six per centum (6%) per annum, and shall be payable semi-annually.

En. Sec. 4, Ch. 147, L. 1927.

1224.5. Dates of issue and payments. In order that the dates of payment of installments on school district bond issues may coincide as nearly as possible with the heaviest tax collections, all school district bonds shall preferably bear the date of some day in June or December, and for this reason the bonds may be dated back from the time of the actual sale thereof not exceeding five (5) months, but no interest shall be charged on these bonds before they have been delivered to the purchaser and payment made therefor; interest accrued on bonds according to their terms at the time of delivery shall either be refunded by the purchaser or deducted from the first interest payments falling due. The failure to date such bonds in June or December shall not in any way affect their validity.

En. Sec. 5, Ch. 147, L. 1927.

1224.6. Certain bonds may be issued without holding an election. Bonds issued for the purpose of providing the necessary funds to pay indebtedness to another district, or districts, and bonds issued for the purpose of providing necessary funds to pay and redeem outstanding bonds which were issued prior to March 1st, 1924, as authorized in subdivisions "f" and "g" of section one of this act, may be issued without submitting the question of so doing at an election. In order to issue bonds for such purposes it shall only be necessary for the board of school trustees, at a regular or duly called special meeting of the board, to pass and adopt a resolution setting forth the facts in regard to the indebtedness to be paid or the bonds to be refunded, showing the reasons for issuing new bonds and fixing and determining the details of such new bonds, and then to give notice of the sale of such new bonds in the same manner that notice is required to be given of the sale of bonds authorized at a school election.

En. Sec. 6, Ch. 147, L. 1927.

1224.7. Exchange of other forms of bonds for amortization bonds. Subject to the approval of the state board of land commissioners, the board of trustees of any school district in this state is hereby vested with the power and authority to issue amortization bonds for the purpose of refunding any outstanding bonds of such school district held by the state of Montana

and which were not issued either as amortization or serial bonds, whether such outstanding bonds are due or not, and to exchange the same for such outstanding bonds. Such amortization bonds shall conform in all respects to the definition of amortization bonds as set forth in this act, and shall bear interest at such rate as may be agreed upon between the board of school trustees and the state board of land commissioners, but such rate of interest shall not be less than the interest rate on the old bonds and shall in no case exceed six per centum (6%) per annum. Such amortization bonds may be issued and exchanged for such outstanding bonds without submitting the question if issuing the same to an election, and it shall not be necessary to publish any notice of sale of such bonds. This section shall not be so construed as to deprive boards of school trustees of the right to issue and sell refunding bonds by the ordinary procedure and advertise the sale thereof as provided in this act.

En. Sec. 7, Ch. 147, L. 1927.

1224.8. Petition and election required for bond issues for other purposes. School district bonds for any other purpose than those stated in sections six and seven of this act, shall not be issued unless authorized at a duly called election at which the question of issuing such bonds was submitted to the electors of the school district; and no such election shall be called unless there has been presented to the board of trustees a petition asking that such election be held and such question be submitted, signed by not less than twenty per centum (20%) of the qualified registered electors residing within the school district, who are taxpayers upon property therein and whose names appear on the last completed assessment-roll for state, county and school district taxes.

En. Sec. 8, Ch. 147, L. 1927.

1224.9. Form, contents and proof or petition. The petition for the calling of an election to vote upon the question of issuing school district bonds shall plainly state the purpose of the proposed bond issue and shall estimate the amount of bonds necessary to be issued for such purpose or purposes. When the bonds sought to be issued are for two or more purposes, the amount to be issued for each single purpose shall be separately estimated in the petition. It may be in the form of one single petition or consist of more than one petition, all being identical in form and fastened together, after being circulated and signed, so as to form one petition before being delivered to the county clerk as hereinafter provided. The school district clerk or any one or more qualified electors of the school district may circulate the petition or petitions, and the clerk or each elector circulating such petition shall subscribe or attach to each of the petitions, circulated by him, an affidavit to the effect that the signatures are genuine and that the signers knew the contents thereof at the time of signing the same. The completed petition, before being presented to the board of school trustees, shall be delivered to the county clerk and recorder of the county in which the school district is situated, who shall examine the same and shall indorse thereon or attach thereto his certificate, which certificate shall set forth:

(a). The total number of persons who are registered electors and taxpayers upon property within the school district whose names appear on the last completed assessment-roll for state, county and school district taxes.

(b). Which and how many of the persons whose names are subscribed to the petition are possessed of all of these qualifications.

(c). Whether such qualified signers constitute more or less than twenty per centum (20%) of such registered electors and taxpayers within the district.

The county clerk and recorder shall promptly deliver or transmit such petition, with his certificate indorsed thereon or attached thereto, to the clerk of the board of school trustees of such district.

En. Sec. 9, Ch. 147, L. 1927.

1224.10. Meeting of board of trustees to consider petition and calling of election. Upon such petition being received by the clerk of the school district, a meeting of the board of trustees shall be called to consider the same. The board of trustees shall be the judges of the sufficiency of the petition and the findings of such board shall be conclusive against the school district and in favor of the innocent holder of bonds issued pursuant to the election called and held by reason of the presentation of such petition. If it is found that the petition is in proper form and bears the requisite number of signatures, the board shall pass and adopt a resolution which shall recite the essential facts in regard to the petition and its presentation, fix the exact amount of bonds proposed to be issued, which may be more or less than the amount estimated in the petition, determine the number of years through which the bonds are to be paid, not to exceed twenty (20) years; fix the date of election, which shall not be less than twenty (20) days, nor more than thirty (30) days after the date of the passage and adoption of such resolution, appoint three electors of the district who are qualified to vote at such election to act as judges of election, and direct the clerk to give notice of such election. The notice of election shall designate some certain schoolhouse in said school district and be in substantially the following form:

"Notice of School District Bond Election.

Notice is hereby given by the undersigned clerk of School District No. of county, state of Montana, that pursuant to a certain resolution duly adopted at a meeting of the board of trustees of the said school district held on the day of, A. D., 19..., an election of the registered qualified electors of School District No. of county, state of Montana, who are taxpayers therein and whose names appear in the last completed assessment-roll for state, county and school district taxes prior to the holding of such election, will be held on the day of, A. D., 19..., at for the purpose of voting upon the question of whether or not the board of school trustees shall be authorized to issue and sell bonds of said school district in the amount of dollars (\$.....), bearing interest at a rate not exceeding six per centum (6%) per annum, payable semi-annually, for the

purpose of (here state purpose)
The bonds to be issued will be either amortization or serial bonds, and
amortization bonds will be the first choice of the board of trustees. The
bonds to be issued, whether amortization or serial bonds, will be payable
in installments over a period of (state number) years,
and redeemable in full five (5) years from the date of issue.
The polls will be open from o'clock M. and until
..... o'clock M. of the said day.
Dated and posted this day of, A. D.,
19.....

.....
Clerk of School District No., of County,
State of Montana.”

If the bonds proposed to be issued are for more than one purpose,
then each purpose shall be separately stated in the notice together with
the proposed amount of bonds therefor.
The school district clerk shall, not less than fifteen (15) days before
the day specified for such election, post notice of such election in not less
than three (3) public places within the district, and in incorporated
cities and towns at least one (1) notice must be posted at each voting place
designated for such election.
In school districts of the first class the board of trustees must also
cause the notice to be published once a week for two (2) successive weeks
in some newspaper of general circulation in the district, if one be published
therein, in addition to such posting.

En. Sec. 10, Ch. 147, L. 1927.

1224.11. Preparation of ballots. The school district clerk shall cause
ballots to be prepared for all such bond elections, and whenever bonds
for more than one purpose are to be voted upon at the same election,
separate ballots shall be prepared for each purpose. All such ballots shall
be substantially in the following form:

Official Ballot.

School District Bond Election.

Instructions to Voters: Make an X or similar mark in the vacant
square before the words “Bonds—Yes” if you wish to vote for the
bond issue; if you are opposed to the bond issue make an X or similar
mark in the square before the words “Bonds—No.”
Shall the board of trustees be authorized to issue and sell bonds of
this school district in the amount of dollars (\$.....) bearing
interest at a rate not exceeding six per centum (6%) per annum, payable,
semi-annually during a period not exceeding years, redeemable
at any time after five years, for the purpose of
(here state the purpose the same way as in the notice of election).
☐ Bonds—Yes.
☐ Bonds—No.

En. Sec. 11, Ch. 147, L. 1927.

1224.12. Who entitled to vote — List of electors and poll books. In all school district bond elections hereafter held only qualified registered electors residing within the district who are taxpayers upon property therein and whose names appear upon the last completed assessment-roll for state, county and school district taxes, shall have the right to vote. Upon the adoption of the resolution calling for the election, the clerk of the school district shall notify the county clerk of the date on which the election is to be held, and qualified persons shall be allowed to register for such election up till noon of the fifteenth (15th) day prior to the date thereof. At that time the registration books shall be closed for such election, but it shall not be necessary to give any notice of such closing of the registration books.

After the closing of the registration books for such election the county clerk shall promptly prepare lists of the registered electors of such district who are taxpayers upon property therein and whose names appear on the last completed assessment-roll for state, county and school district taxes, and who are entitled to vote at such election, and shall prepare poll books for such election, as provided in section 568 of the Revised Codes of Montana of 1921, and deliver the same to the school district clerk who shall deliver the same to the judge prior to the opening of the polls. In school districts of the first class it shall be the duty of the school district clerk to post such lists in five (5) public and conspicuous places within the district at least ten (10) days prior to the date of election. It shall not be necessary to post such lists in districts of the second and third class. A charge of five cents per name for the use and benefit of the county shall be made by the county clerk for preparing such lists and poll books.

En. Sec. 12, Ch. 147, L. 1927.

1224.13. Conduct of election. The bond election shall be conducted in the manner prescribed for the election of school trustees and returns shall be made and canvassed in a similar manner.

En. Sec. 13, Ch. 147, L. 1927.

1224.14. Percentage of electors required to authorize bond issue. In all school district bond elections a majority of the votes cast shall be sufficient to approve and adopt the bond proposition and authorize the issuance of the bonds.

En. Sec. 14, Ch. 147, L. 1927.

1224.15. Meeting of board of trustees to canvass election returns—Resolution for bond issue. If such election shall authorize the issuance of such bonds, the board of trustees shall within sixty (60) days from the date of such election pass and adopt a resolution providing for the issue of the bonds; provided that such bonds may be issued in one or more series or installments as the board may in such resolution direct. This resolution shall recite the amount of bonds to be issued, the maximum rate of interest, the purpose of the issue, the date they shall bear, and the period of time through which they shall be paid, and providing the manner of execution of same. It shall provide for giving preference to amortiza-

tion bonds, but shall fix the denomination of serial bonds in case it shall be found necessary to issue bonds in that form, and shall direct the clerk to give notice of the sale of the bonds.

En. Sec. 15, Ch. 147, L. 1927.

1224.16. Form of notice. The notice of sale shall state the purpose or purposes for which the bonds are to be issued and the amount proposed to be issued for each purpose and shall be substantially in the following form:

“Notice of Sale of School District Bonds.

Notice is hereby given by the board of trustees of School District No. of county, state of Montana, that the said board of trustees will on the day of, 19...., at the hour of o'clock M. at, in the said school district, sell to the highest and best bidder for cash, either amortization or serial bonds of the said school district in the total amount of dollars (\$.....), for the purpose of”

Amortization bonds will be the first choice and serial bonds will be the second choice of the said school board.

If amortization bonds are sold and issued, the entire issue may be put into one single bond or divided into several bonds, as the said board of trustees may determine upon at the time of sale, both principal and interest to be payable in semi-annual installments during a period of years from the date of issue.

If serial bonds are issued and sold they will be in the amount of dollars (\$.....) each, except the last bond which will be in the amount of dollars (\$.....) the sum of dollars (\$.....) of the said serial bonds will become payable on the day of, 19...., and a like amount on the same day each year thereafter until all of such bonds are paid, except that the last installment will be in the amount of dollars (\$.....).

The said bonds, whether amortization or serial bonds, will bear date of, 19...., and will bear interest at a rate not exceeding six per centum (6%) per annum, payable semi-annually, on the day of (month) and (month) in each year, and will be redeemable in full on any interest payment date from and after five (5) years from the date of issue.

The said bonds will be sold for not less than their par value with accrued interest, and all bidders must state the lowest rate of interest at which they will purchase the bonds at par. The board of trustees reserves the right to reject any and all bids and to sell the said bonds at private sale.

All bids other than by or on behalf of the state board of land commissioners must be accompanied by a certified check in the sum of dollars (\$.....) payable to the order of the clerk,

which will be forfeited by the successful bidder in the event that he shall refuse to purchase the said bonds.

All bids should be addressed to the undersigned clerk.

.....,
Chairman, School District No. of County.

Address:

Attest:

Clerk, School District No. of County.

Address:

En. Sec. 16, Ch. 147, L. 1927.

1224.17. Publication of notice of sale. The school district clerk shall cause such notice to be published once a week for four (4) successive weeks in some newspaper printed and published in the state of Montana, the first publication to be not less than thirty (30) days prior to the date of sale. In districts of the first and second class, if so directed by the board of trustees, the clerk shall also cause a brief notice of the bond sale to be published in some newspaper in the city of New York. The clerk shall immediately after the first publication of such notice mail a copy thereof to the state board of land commissioners.

En. Sec. 17, Ch. 147, L. 1927.

1224.18. Sale of bonds. The board of trustees shall meet at the time and place fixed in the notice to consider bids on the bond issue. The bonds shall be sold at not less than par and accrued interest and each bidder shall specify the form of bonds to be issued, whether amortization or serial, and the rate of interest at which he will purchase the bonds. A bid for amortization bonds shall have the preference over a bid for serial bonds, all other things being equal; and in considering bids on these classes of bonds, the board shall take into consideration not only the rate of interest demanded on each kind, but also every other known element affecting the total cost of the bonds to the district when paid in full. The board of trustees shall accept the bid which they shall judge most advantageous to the school district; provided, that no bid shall be accepted which will require the bonds to bear a rate of interest exceeding six per centum (6%) per annum. No attorney fees, brokerage or other fees, or commissions of any kind shall be paid to any person or corporation for assisting in the proceedings or in the preparation of the bonds, or in negotiating the sale thereof. The trustees are authorized to reject any or all bids and to sell the bonds at private sale if they deem it for the best interests of the district, provided, however that such bonds shall not be sold at less than par and accrued interest.

En. Sec. 18, Ch. 147, L. 1927.

1224.19. Form of bonds. It shall not be necessary for the board of school district trustees to prescribe the detailed form of the bonds to be issued, but they must conform to all legal requirements for the payment thereof, whether they are issued as amortization or serial bonds. Such bonds shall be issued in the name of the school district and shall be

signed by the chairman of the board of trustees and the school district clerk and attested with the corporate seal of the district if it has such seal. The coupons attached to the bonds shall also be signed by the said chairman and clerk, but facsimiles of their signatures may be affixed to the coupons in place of their signatures when so recited in the bonds. If the bonds are purchased by the state board of land commissioners, all payments of both principal and interest shall be made at the office of the state treasurer.

En. Sec. 19, Ch. 147, L. 1927.

1224.20. Printing of bonds. Under the direction of the board of trustees, the district clerk shall cause the bonds with coupons thereto attached to be printed or lithographed at the expense of the school district at the lowest commercial rates.

En. Sec. 20, Ch. 147, L. 1927.

1224.21. Registration of bonds—Copy to be preserved. When duly executed by the chairman and the clerk, all school district bonds shall be registered by the county treasurer in a book provided for that purpose before being delivered to the purchaser. This registration shall show the number and amount of each bond, the date of issue, date redeemable, the name of the purchaser, and the amount and due date of all payments required on the bonds. The school district clerk shall also provide the county treasurer with an unsigned and canceled printed copy of each issue of said school district bonds hereafter issued to be preserved in his office.

En. Sec. 21, Ch. 147, L. 1927.

1224.22. Payment for bonds. In case the state board of land commissioners is the purchaser of the bonds, the county treasurer shall forward the registered bonds to the secretary of the board who shall cause the same to be delivered to the state treasurer and to be paid in the manner provided by law. In case the bonds are purchased by other investors the county treasurer shall deliver the bonds to them upon receiving full payment therefor. All moneys arising from the sale of such bonds shall be paid to the county treasurer and by him credited to the school district issuing the same, and shall be immediately available for the purpose for which the bonds were issued and no other purpose.

En. Sec. 22, Ch. 147, L. 1927.

1224.23. County attorney to assist in the proceedings. It is hereby expressly made a part of the official duties of the county attorney of every county of this state to advise and assist the boards of school district trustees of his county in their bonding proceedings. Before any transcript of school district bonding proceedings is transmitted to the secretary of the state board of land commissioners, he shall carefully examine such transcript, and the same shall not be transmitted until he shall attach thereto his opinion that the proceedings are in full compliance with the statutes.

En. Sec. 23, Ch. 147, L. 1927.

1224.24. School districts liable on bonds. The full faith, credit and taxable resources of every school district issuing bonds under the provisions of this act are hereby solemnly pledged for the repayment of such bonds with interest according to their terms. For the purpose of making the provisions of this act enforceable every school district is hereby declared to be a body corporate which may sue and be sued by or in the name of the board of trustees of such school district.

En. Sec. 24, Ch. 147, L. 1927.

1224.25. Board of trustees to determine amounts necessary for payment of interest and principal on bonds — Duties of treasurer and county commissioners. The board of trustees of every school district in this state having outstanding bonds shall on or before the second Monday of July of each year prepare a statement and certify to the board of county commissioners the amount of money necessary to be raised by taxation for the ensuing year to pay the interest and retire part or all of the principal of each series of its outstanding bonds according to the terms and conditions of such series of bonds and the redemption plans of such board of trustees; but the minimum amount determined upon and certified to the board of county commissioners shall in all cases be sufficient to pay all interest and all installments on principal becoming due during the ensuing year on all series of the outstanding bonds of the district issued subsequent to March 1, 1924; and it shall also in all cases be sufficient to pay all interest becoming due during the ensuing year on each series of outstanding bonds issued prior to March 1, 1924, and to place in the sinking fund such an amount as will be obtained by dividing the full amount of such series by the number of years for which the bonds were issued; provided, however, that in the case of a joint school district one copy of such certificate and statement must be transmitted to the county superintendent of each county in which any part of the joint district is situated, instead of to the board of county commissioners.

The county treasurer shall examine the statement of the amount or amounts determined upon by the board of school trustees and certified to the board of county commissioners, and if he finds that the amount certified is less than the minimum amount as defined in this section, then he shall raise the amount to such minimum for each series of bonds; and if the board of trustees shall fail to certify any amount whatever, then the county treasurer shall make out the statement and certify to the board of county commissioners the minimum amount for each series of bonds as defined in this section.

En. Sec. 25, Ch. 147, L. 1927.

1224.26. Levy of taxes by board of county commissioners to pay interest and principal on bonds. The board of county commissioners of every county of this state shall at the time of making the annual levy of taxes for county purposes levy taxes for the same year upon all taxable property within every school district of its county having outstanding bonds for the payment of interest and principal on such bonds as certified to it under the provisions of the preceding section. The taxes so levied

shall in all respects be collected as state and county taxes and shall be a lien upon the property assessed and taxed the same as such taxes.

En. Sec. 26, Ch. 147, L. 1927.

1224.27. Liability of the board of county commissioners. If the board of county commissioners shall fail in any year to make a levy for any issue or series of bonds of any school district sufficient to raise the amount necessary for payment of interest and principal, if any, becoming due during the next ensuing year, or to raise an amount sufficient to pay the interest becoming due during such year and to create a sinking fund for payment of the principal of such bonds on their maturity, as such amounts are certified to it under the provisions of section twenty-five of this act, the holder of any bond of such issue or series, or any taxpayer paying taxes upon property situated in such school district, may apply to the district court of the county in which such school district is situated for a writ of mandate to compel the board of county commissioners of such county to make a sufficient levy for such purposes; and if, upon the hearing of such application, it shall appear to the satisfaction of the court that the board of county commissioners of such county has failed to make any levy whatever, or has made a levy but that the same is insufficient to raise the amount required to be raised, as shown by the statement provided for by section twenty-five of this act, the court shall determine the amount of such deficiency and shall issue a writ of mandate directed to and requiring the said board of county commissioners, at the next meeting thereof for the purpose of fixing tax levies for county purposes, to fix and make a levy against all taxable property in such school district sufficient to raise the amount of such deficiency, which levy shall be in addition to any levy required to be made at that time for the year then next ensuing; provided, however, that any costs which may be allowed or awarded the petitioner in any such proceeding shall be paid by the members of the board of county commissioners, and shall not be a charge against either such school district or the county.

En. Sec. 27, Ch. 147, L. 1927.

1224.28. County treasurer to keep record of the various funds. The county treasurer shall keep a separate sinking and interest fund for each school district, and shall charge all moneys collected from taxes levied for the payment of interest and principal of school district bonds to the several funds to which they properly belong, and the money in each such fund shall be used for the payment of the interest and principal of the bonds belonging to the same, and for no other purpose whatever, except as hereafter provided in this act.

En. Sec. 28, Ch. 147, L. 1927.

1224.29. Duty of county treasurer. The county treasurer shall pay from the proper funds applicable thereto all amounts of interest and principal on school district bonds as such interest and principal becomes due, upon the presentation and surrender of the coupon or coupons, bond or bonds to be paid; provided, however, that if the bonds are held by the

state of Montana, then all such payments shall be remitted to the state treasurer who shall cancel the coupons or bonds and return the same to the county treasurer together with his receipt; and provided further that if the bonds are not held by the state of Montana, and the interest or principal is made payable at some designated bank or financial institution, then the treasurer shall remit the amount due for interest or principal to such bank or financial institution for payment against the surrender of the canceled coupons or bonds.

Whenever any school district bond, or installment thereon, shall become due and payable, interest shall cease thereon on such date; provided, however, that if such bond shall be presented for payment, or payment of any installment shall be demanded, when the same becomes due, and payment of such bond or installment shall not be made because of sufficient funds not being available for such purpose, interest shall continue thereon until payment is made.

Any and all installments on interest and principal on bonds held by the state not promptly paid when due shall draw interest at the rate of six per centum (6%) per annum from the date due until actually paid, irrespective of the rate of interest on the bonds themselves.

En. Sec. 29, Ch. 147, L. 1927.

1224.30. Payment of bonds held by the state and of optional bonds.

Whenever there is available money in any school district bond sinking fund sufficient to pay and redeem one or more bonds of such series or issue held by the state of Montana, the county treasurer must apply such available money in payment of as many of such bonds as the same will pay. Not less than thirty (30) days before the next interest due date the county treasurer must give notice to the state board of land commissioners that on such interest due date such bond or bonds will be paid, and such county treasurer, before such interest due date, must remit to the state treasurer the amount required to pay such bond or bonds with interest. Upon receipt of such amount, the state treasurer must cancel such bond or bonds, and all unpaid coupons attached thereto, and return the same, with his receipt, to the county treasurer, provided, however, that nothing in this section shall be so construed as to permit the issuance of refunding bonds by any school district for the purpose of redeeming, before maturity, any bond or bonds held by the state, nor to grant the right to pay any bond or bonds held by the state with the proceeds of any refunding bond issue, except as provided in section 7 of this act.

Whenever there is available money in any school district bond sinking fund sufficient to pay one or more optional bonds of such issue or series, and which optional bonds are not yet due but are then redeemable, or will become redeemable on the next interest due date, and such bonds are not held by the state of Montana, the county treasurer must apply such available money in payment and redemption of as many of such bonds as the same will pay and redeem. The county treasurer must give notice to the holder of such bond or bonds; if known to him, or to any bank or financial institution at which such bonds are payable, at least thirty (30) days before the next interest due date, that such bond or bonds will be paid and redeemed on such date. If such bonds are payable at some

bank or financial institution the county treasurer must remit to such bank or financial institution, before such interest due date, an amount sufficient to pay and redeem such bond or bonds. If such bond or bonds are not represented for payment and redemption on such interest due date interest shall cease thereon on such date.

En. Sec. 30, Ch. 147, L. 1927.

1224.31. Entry of payments and notice to clerk. The county treasurer shall make the necessary entries of all such payments of interest and principal on his bond registration record and shall promptly notify the clerk of the school district of the payments made and shall at the end of each month deliver the canceled coupons and securities to the county clerk, who shall file same in his office.

En. Sec. 31, Ch. 147, L. 1927.

1224.32. Balances of sinking funds to be transferred. When all of the bonds of any school district, together with all interest thereon, have been fully paid, all money remaining in the sinking fund for such school district and all moneys which may come into such sinking fund from the payment of the delinquent taxes shall be transferred by the county treasurer to the general fund of such school district.

En. Sec. 32, Ch. 147, L. 1927.

1224.33. Effect partial invalidity act. If any part or parts of this act shall be held to be unconstitutional, this shall not affect the validity of any other provisions of this act.

En. Sec. 33, Ch. 147, L. 1927.

1224.34. Repeal. Sections 1032, 1230, 1232, and sections 1244 to 1251 inclusive of the Revised Codes of Montana of 1921, and sections 1224, 1225, 1226, 1228 and 1229 of the Revised Codes of Montana of 1921, as amended by chapter 153 of the Session Laws of 1923, and the said chapter 153 of the Session Laws of 1923, and all other acts and parts of acts in conflict with the provisions of this act are hereby repealed; provided, however, that any and all outstanding bonds lawfully issued by school districts under such repealed sections and acts shall be and remain valid and subsisting bonds and obligations of the school districts issuing the same, and shall be subject to payment and redemption in the manner provided in this act; and provided, further, that if, at the time this act takes effect, any school district has initiated proceedings under such repealed sections and acts for the purpose of issuing bonds for any purpose therein authorized, such proceedings may be completed and such bonds issued and sold in the manner provided in such repealed sections and acts.

En. Sec. 34, Ch. 147, L. 1927.

1225. Manner of holding elections—Ballots—Form of bonds.

Rep. Sec. 34, Ch. 147, L. 1927.

1226. Notice of sale of bonds.

Rep. Sec. 34, Ch. 147, L. 1927.

The absence from a complaint of an allegation that the plaintiff had paid the price of the school district bonds into the county treasury, or had tendered payment, made a condition prece-

dent to delivery of them to it by this section before amendment, rendered the pleading fatally defective. *Keeler Bros. v. School District No. 3*, 62 Mont. 356, 205 Pac. 217.

1228, 1229. Tax-sinking fund and redemption of school bonds.

Rep. Sec. 34, Ch. 147, L. 1927.

1230. Redemption—Notice to bondholder.

Rep. Sec. 34, Ch. 147, L. 1927.

1232. Printing of bonds.

Rep. Sec. 34, Ch. 147, L. 1927.

1234-1242, inclusive. Relating to issuance of school district refunding bonds.

Rep. Sec. 2, Ch. 153, L. 1923.

1244-1251, inclusive. Relating to issuance of school district bonds.

Rep. Sec. 34, Ch. 147, L. 1927.

1252. Signers required on petition for bond elections.

Three days before this and the two following sections, prescribing the steps necessary to authorize a city or town council to call an election to determine whether municipal bonds shall be issued, became effective, petitions were filed with the town clerk asking the council to call such an election. The act provided, *inter alia*, that the election could only be called on petition signed by a certain per cent of the electors of the town possessing certain qualifications. The council, at a meeting, held on the day

the act took effect, found the petitions sufficient and ordered an election. Under the law as it was before the passage of the act the council could call an election of its own motion, and the filing of petitions was unnecessary. Held, that by the enactment of said act the proceeding initiated prior to its passage was nullified and the election called and held in disregard of its provisions illegal and void. *Brown v. Town of Cascade*, 62 Mont. 564, 205 Pac. 828.

1254.1. School trustees may issue warrants on bank failure—When.

The board of school trustees of any school district in the state of Montana shall have, and are hereby given, in addition to powers already conferred upon them, authority, whenever at any time such district shall have all or a part of its funds deposited in any bank which has become insolvent, to issue warrants to the amount of not to exceed one hundred per centum of such funds so deposited for teachers' salaries, school supplies and equipment, new buildings heretofore completed, necessary repairs, school buildings and heating plants therein, or other necessary expenses incurred in the maintenance of schools in such district, and, in case such funds so deposited are not recovered in sufficient amount to pay off and discharge such warrants, and to levy taxes therefor would be burdensome to such district or would exceed the limit of taxes permitted by law to be levied, to issue negotiable coupon bonds therefor and to pledge the credit and resources of the district for the payment of the principal and interest of such bonds. The provisions of this act shall apply to rural school districts organized under chapter 80 of part 3, of the Political Code, 1921, whether the funds shall have been distributed to the subdistrict or not;

and the board of trustees of such rural school district shall have the power to negotiate bonds, as herein provided for trustees of school districts, for the purpose of funding outstanding warrants of the subdistricts thereof, and to pledge the credit and resources of the rural school district for the payment of the principal and interest of such bonds.

En. Sec. 1, Ch. 128, L. 1923.

The contention that the legislature by the enactment of chapter 128, L. 1923, authorizing school districts to issue warrants in a stated amount where the banks in which their funds had been deposited became insolvent—an emergency measure—modified or repealed section

4767, Revised Codes above, so as to relieve the county of its liability under that section for funds deposited with its treasurer by school districts and by him deposited in county depositories, has no merit. State v. McGraw, 74 Mont. 152, 240 Pac. 812.

1254.2. Funding bonds may issue when. The funding bonds authorized by this act shall be issued under the following conditions, to wit:

1. When the board of trustees shall have listed certain unpaid warrants, and certified that they were regularly issued subsequent to July 1, 1922, for purposes set forth in section 1 of this act and there is not sufficient money, other than that deposited in insolvent banks, to the credit of such school district available for the payment of such outstanding warrants.

2. When in the judgment of the board of trustees of such district to levy and collect a tax for the purpose of paying such warrants will be a hardship and burden to said school district.

3. When sufficient money has not been recovered from such insolvent bank or banks to pay or discharge such warrants.

4. Provided, it shall not be necessary to submit the question of the issuance of such bonds to fund such indebtedness to the vote of the electors of such school district.

En. Sec. 2, Ch. 128, L. 1923.

1254.3. Resolution. The board of school trustees shall, by resolution, declare that the existing indebtedness shall be funded by the issuance of bonds, which said resolution shall describe the amount and kinds of indebtedness which is to be funded, and declare and certify as to the validity of such indebtedness, and that the conditions exist as specified in section 2 of this act, which resolution and certificate shall be conclusive against the district as to the validity of indebtedness so funded in favor of holders of said bonds.

En. Sec. 3, Ch. 128, L. 1923.

1254.4. Interest and term. The board of school trustees shall, by resolution fix the rate of interest which said bonds shall bear not exceeding six per centum per annum, payable semi-annually; the denomination, form and terms thereof, which must be serial bonds for a term not to exceed ten years; such bonds shall bear the signature of the chairman of the board of trustees and shall be signed by the clerk of said district; and the coupons attached to the bond shall be signed by the said chairman and clerk, provided a facsimile of the signatures of the chairman and clerk may

be affixed to the coupon only when so recited in the bonds and the corporate seal of the school district shall be affixed to each of the bonds.

Upon execution, the bonds shall be deposited with the county treasurer, who shall register the same in a book provided for that purpose which shall show the number and amount of each bond, its date, the date payable and redeemable, and the person to whom the same is issued, and the county treasurer shall deliver the same to the person or persons to whom sold upon their making payment for the same or if so directed by the board of trustees to such person or persons who shall surrender an amount of warrants, which, with accrued interest, shall equal the par value of such bonds and such warrants so received by the treasurer shall be immediately canceled.

En. Sec. 4, Ch. 128, L. 1923.

1254.5. Tax levy. The board of school trustees shall provide for a tax levy to pay the principal and interest of such bonds as they mature in accordance with the provision of the laws relating to taxes and sinking fund.

En. Sec. 5, Ch. 128, L. 1923.

1254.6. Sale of bonds—Advertisement—Use of proceeds. When the board issues any bonds authorized by this act, it is its duty to sell the same and it shall give notice by advertisement in some newspaper published in this state at least once a week for four consecutive weeks, the date of the first publication to be not less than thirty days prior to date of sale; such advertisement must state the date, hour and place where such sale will take place and shall describe the bonds to be sold, giving the amount, denomination, rate of interest, time payable, time redeemable and purpose of the proposed bond issue. The trustees are authorized to reject any and all bids and sell such bonds at private sale if they deem it for the best interests of the district; the proceeds from the sale of such bonds to be used wholly for the purpose of taking up and retiring the outstanding indebtedness of the district as described in the resolution provided for by section 3 of this act. Provided, however, that the board may, if in its opinion it would be to the best interests of the district so to do, execute an exchange of such bonds by issuing the same to any person or persons holding the warrants of said district issued as provided in this act, the exchange to be made dollar for dollar.

En. Sec. 6, Ch. 128, L. 1923.

1254.7. Disposal of moneys received from bank. Any money recovered from such insolvent bank or banks, after the date of the issuance of such bonds, shall be credited to the sinking fund for the retirement of such bonds.

En. Sec. 7, Ch. 128, L. 1923.

1254.8. Emergency clause. There being no adequate provision by law for the meeting of the emergency existing and there being a large number of school districts in the state of Montana which will be unable to continue their school operations unless their present financial condition is

remedied, and, this act being deemed of immediate importance and an emergency existing within the meaning of the constitution, therefore this act shall take effect and be in force from and after its passage and approval.

En. Sec. 9, Ch. 128, L. 1923.

1254.9. County high school trustees may issue warrants on bank failure. The board of trustees of any county high school in the state of Montana shall have and are hereby given, in addition to powers already conferred upon them authority, whenever at any time such county high school shall have all or part of its funds deposited in any bank, which has become insolvent, to issue warrants to an amount of not to exceed one hundred per centum of such funds so deposited, for teachers' salaries, school supplies and equipment, new buildings heretofore completed, necessary repairs to school buildings and heating plants therein or other necessary expenses incurred in the maintenance of such school, and, in case such funds so deposited are not recovered in sufficient amount to pay off and discharge such warrants and to levy a tax therefor, will be burdensome to such county or will exceed the limit of taxes permitted by law to be levied, the board of county commissioners of such county shall have and are hereby given in addition to the powers already conferred upon them, authority to issue negotiable coupon bonds therefor and to pledge the credit and resources of the county for the payment of the principal and interest of such bonds.

En. Sec. 1, Ch. 129, L. 1923.

This act being a special statute and chapter 21, L. 1923, amending section

4614, being a general one, the former statute is controlling. *Frankze v. Wright et al*, 70 Mont. 531, 226 Pac. 524.

1254.10. Funding bonds may issue when. The funding bonds authorized by this act shall be issued under the following conditions, to wit:

1. When the board of trustees shall have listed certain unpaid warrants, and certified that they were regularly issued subsequent to July 1, 1922, for purposes set forth in section 1, of this act, and there is not sufficient money, other than that deposited in insolvent banks, to the credit of such school district available for the payment of such outstanding warrants.

2. When in the judgment of the board of county commissioners of such county to levy and collect a tax for the purpose of paying such warrants will be a hardship and burden to said school district;

3. When sufficient money has not been recovered from such insolvent bank or banks to pay or discharge such warrants; and

4. When to levy a tax therefor would exceed the limit of taxation allowed by law. Provided, it shall not be necessary to submit the question of the issuance of such bonds to fund such indebtedness to the vote of the electors of such county.

En. Sec. 2, Ch. 129, L. 1923.

1254.11. Resolution. The board of county commissioners shall, by resolution, declare that the existing indebtedness shall be funded by the issuance of bonds, which said resolution shall describe the amount and

kinds of indebtedness, which is to be funded, and declare and certify as to the validity of such indebtedness and that the conditions exist as specified in section 2, of this act, which resolution and certificate shall be conclusive against the county as to the validity of indebtedness funded in favor of holders of said bonds.

En. Sec. 3, Ch. 129, L. 1923.

1254.12. Interest and term of bonds—Registration. The board of county commissioners shall, by resolution, fix the rate of interest which said bonds shall bear not exceeding six per centum per annum, payable semi-annually; the denomination, form and terms thereof, which must be serial bonds for a term not to exceed ten years; such bonds shall bear the signature of the chairman of the board of county commissioners and shall be signed by the clerk of said county; and the coupons attached to the bonds shall be signed by the said chairman and clerk, provided a facsimile of the signatures of the chairman and clerk may be affixed to the coupon only when so recited in the bonds and the corporate seal of the county shall be affixed to each of the bonds.

Upon execution, the bonds shall be deposited with the county treasurer, who shall register the same in a book provided for that purpose which shall show the number and amount of each bond, its date, the date payable and redeemable, and the person to whom the same is issued, and the county treasurer shall deliver the same to the person or persons to whom sold upon their making payment for the same or if so directed by the board of county commissioners to such person or persons who shall surrender an amount of warrants, which with accrued interest, shall equal the par value of such bonds and such warrants so received by the treasurer shall be immediately canceled.

En. Sec. 4, Ch. 129, L. 1923.

1254.13. Tax levy. The board of county commissioners shall provide for a tax levy to pay the principal and interest of such bonds as they mature.

En. Sec. 5, Ch. 129, L. 1923.

1254.14. Sale of bonds—Advertisement—Use of proceeds. When the board issues any bonds authorized by this act, it is its duty to sell the same and it shall give notice by advertisement in some newspaper published in this state at least once a week for four consecutive weeks, the date of the first publication to be not less than thirty days prior to date of sale; such advertisement must state the date, hour and place where such sale will take place and shall describe the bonds to be sold, giving the amount, denomination, rate of interest, time payable, time redeemable and purpose of the proposed bond issue. The board of county commissioners are authorized to reject any and all bids and sell such bonds at private sale if they deem it for the best interests of the county; the proceeds from the sale of such bonds to be used wholly for the purpose of taking up and retiring the outstanding indebtedness of the county high school as described in the resolution provided for by section 3 of this act. Provided, however, that the board may, if in its opinion it would be to

the best interests of the county so to do, execute an exchange of such bonds by issuing the same to any person or persons holding the warrants of said county issued as provided in this act, the exchange to be made dollar for dollar.

En. Sec. 6, Ch. 129, L. 1923.

1254.15. Disposal moneys received from bank. Any money recovered from such insolvent bank or banks, after the date of the issuance of such bonds, shall be credited to the sinking fund for the retirement of such bonds.

En. Sec. 7, Ch. 129, L. 1923.

1254.16. Emergency clause. There being no adequate provision by law for the meeting of the emergency existing and there being a number of county high schools in the state of Montana which will be unable to continue their school operations unless their present financial condition is remedied, and, this act being deemed of immediate importance, and an emergency existing within the meaning of the constitution, therefore this act shall take effect and be in force from and after its passage and approval.

En. Sec. 9, Ch. 129, L. 1923.

1254.17. School trustees may fund indebtedness. The board of school trustees of any school district in the state of Montana shall have, and are hereby given, in addition to the powers already conferred upon them, authority, whenever at any time such district shall have a floating indebtedness incurred on or before July 1, 1923, for teachers' salaries, school supplies and other necessary expenses incurred in the maintenance of schools in such district represented by warrants heretofore issued whether in excess of funds on hand and anticipated revenues or otherwise to fund such indebtedness and to issue negotiable ten year amortization bonds therefor and to pledge the credit and resources of the district for the payment of the principal and interest of such bonds.

En. Sec. 1, Ch. 130, L. 1923.

1254.18. Issuance warrants in excess of avoidable funds when. In addition to the powers conferred by section 1 of this act, and in anticipation of the subsequent issuance of the funding bonds authorized by this act, but subject to the constitutional limitations as to the total indebtedness of school districts, all boards of school trustees are hereby given authority to issue warrants in excess of the available funds of the school district, and in excess of the amount levied by said school district for the current school year. Said warrants shall be issued only in payment of the current expenses of said school for the completion of the school year of 1922-1923 and not for the purpose of increasing salaries, purchasing new equipment or increasing school facilities in any manner whatsoever. The warrants so issued may likewise be funded in accordance with the terms of this act.

En. Sec. 2, Ch. 130, L. 1923.

1254.19. Funding bonds may issue when. The funding bonds authorized by this act shall be issued under the following conditions, to wit:

1. When there is not sufficient money to the credit of said school district applicable to the payment of any such outstanding indebtedness; and
2. When, in the judgment of the board of school trustees, to levy and collect a tax for the purpose of paying such indebtedness would be a hardship and burden to said school district;

Provided, it shall not be necessary to submit the question of the issuance of such bonds to fund such indebtedness to the vote of the electors of such district.

En. Sec. 3, Ch. 130, L. 1923.

1254.20. Resolution. The board of school trustees shall, by resolution, declare that the existing indebtedness shall be funded by the issuance of bonds, which said resolution shall describe the amount and kinds of the indebtedness which is to be funded and declare and certify as to the validity of such indebtedness, which resolution and certificate shall be conclusive against the district as to the validity of the indebtedness so funded in favor of innocent holders of said bonds.

En. Sec. 4, Ch. 130, L. 1923.

1254.21. Interest and terms of bond—Registration. The board of school trustees shall, by resolution, fix the rate of interest which said bonds shall bear, not exceeding six per centum per annum, payable semi-annually; the time of payment not exceeding ten years after date; if redeemable before maturity, the date thereof; and shall prescribe the denomination and form thereof; such bonds shall bear the signature of the chairman of the board of trustees and shall be signed by the clerk of said district; and the coupons attached to the bonds shall be signed by the said chairman and clerk, provided a facsimile of the signature of the chairman and clerk may be affixed to the coupon, only when so recited in the bonds, and the corporate seal of the school district shall be affixed to each of the bonds. Upon execution, the bonds shall be deposited with the county treasurer, who shall register the same in a book provided for that purpose, which shall show the number and amount of each bond, its date, the date payable and redeemable, and the person to whom the same is issued, and the county treasurer shall deliver the same to the person, or persons, to whom sold, upon their making payment for the same, or, if so directed by the board of trustees, to such person, or persons, as shall surrender an amount of warrants which, with accrued interest, shall equal the par value of such bonds, and said warrants so received by the treasurer shall be duly canceled.

En. Sec. 5, Ch. 130, L. 1923.

1254.22. Tax levy. The board of school trustees shall provide for a tax levy to pay the principal and interest of said bonds as they mature, in accordance with the provisions of section 1228 of the Revised Codes of Montana of 1921.

En. Sec. 6, Ch. 130, L. 1923.

1254.23. Sale of bonds—Advertisement—Use of proceeds. When the board issues any bonds authorized by this chapter, it is its duty to sell the same and they shall give notice by advertising in some newspaper published in this state at least once a week for four consecutive weeks, the date of the first publication to be not less than thirty days prior to the date of sale, such advertisement must state the date, hour and place where such sale will take place and shall describe the bonds to be sold, giving the amount, denomination, rate of interest, time payable, time redeemable and purpose of the proposed bond issue. The trustees are authorized to reject any and all bids and sell such bonds at private sale if they deem it for the best interest of the district, the proceeds from the sale of such bonds to be used wholly for the purpose of taking up and retiring the outstanding indebtedness of the district as described in the resolution provided by section 4 of this act; provided, however, that the board may, if in its opinion it would be to the best interests of the district so to do, effect an exchange of such school district bonds to take up such legal outstanding indebtedness by issuing the same to any person or persons holding the school district warrants or just claims against the school district as set forth in the resolution as provided in section 2 of this act, the exchange to be made dollar for dollar.

En. Sec. 7, Ch. 130, L. 1923.

1254.24. Emergency clause. There being no adequate provision by law for the funding of indebtedness of school districts, and there being a large number of districts which will be unable to continue their school operations unless their present indebtedness be funded into bonds, and this act being deemed of immediate importance, and an emergency existing in the meaning of the constitution, therefore, this act shall take effect and be in force from and after its passage and approval.

En. Sec. 9, Ch. 130, L. 1923.

CHAPTER 101.

COUNTY HIGH SCHOOLS—ACCREDITED DISTRICT SCHOOLS.

1266. Composition and term of board. The board of trustees shall consist of seven (7) members, of which the county superintendent shall be a member, and the remaining six (6) members shall be appointed by the county commissioners. The term of office of trustees, other than the county superintendent, except as is especially provided for in section 1267 of this code, shall be two (2) years and until their successors are appointed and qualified.

Amd. Sec. 1, Ch. 94, L. 1927.

1267. Appointment by county commissioners — Qualifications. The county commissioners shall appoint at their regular meeting in December, 1927, two (2) trustees, one for a term of two (2) years, and one (1) for a term of one (1) year, and, annually thereafter at their regular meeting in December, they shall appoint three (3) trustees for a two (2) year term, their terms to begin on the first day of January after such appointment.

Of the trustees appointed not more than two shall be residents outside of the school district in which the high school is located, and the two trustees residents outside of the school district in which the high school is located, must be appointed in different years.

Amd. Sec. 2, Ch. 94, L. 1927.

1270. Officers — Election and term — Treasurer. At their regular January meeting in each year, the trustees shall choose from their number a president, vice-president, and secretary, who shall hold office for one (1) year, or until their successors have been appointed and qualified, and said trustees shall have authority to make all necessary rules for their government, not inconsistent with the law. The county treasurer of the county shall be the treasurer of the board and the custodian of all funds available for school purposes.

Amd. Sec. 3, Ch. 94, L. 1927.

1271. Powers and duties. The board of trustees shall have power and it shall be their duty:

1. To keep a record of all the official acts done by said board, and to keep a full record of all warrants issued against moneys belonging to said county high school. Payments of money can only be made upon warrants drawn against said funds belonging to said high school, and each warrant so drawn must specify upon its face the purpose for which it is drawn.

2. To proceed, as soon as practicable after their appointment and qualification, to select at the place designated as the location for the county high school, the best site that can be obtained, and the title thereto, upon securing said site by purchase or otherwise shall vest in the county; the trustees shall then proceed to make purchase of material and to let such contracts for necessary school buildings as they may deem proper. They shall not, however, make any purchase or enter into any contract, whereby obligations are assumed in excess of the amount of funds on hand, or available through the levy of taxes for the current year, or the issuance of bonds.

3. To lease, at their discretion, suitable buildings for the use of the high school while the new buildings are in process of erection, or to contract with the trustees of the local school district, or any other parties, for the use of suitable buildings for high school purposes for such time as may be deemed best for the interests of the county.

4. To employ, for a period not to exceed two years, some suitable person to take charge of said school, who shall possess such qualifications as are now required to be possessed by a city superintendent of schools; except that said principal shall not be required to possess more than three years of experience in teaching; to furnish such assistant teachers as they may deem necessary, and to designate the salaries which shall be paid to said principal and assistant teachers; provided, that such teachers shall be required to have the qualifications required of a teacher to hold a position in a district high school, and also to a valid Montana certificate.

5. To adopt, on the recommendation of the principal, such courses of study as will properly fit the student attending said high school for admis-

sion to the collegiate class of any of the state educational institutions and such course of study shall contain the work now provided for accredited high schools by the state board of education.

6. To admit pupils without tuition under such rules and regulations as they may deem proper in regard to age and grade of attainments essential to entitle pupils to admission to such schools; provided, that no person shall be admitted to such high school who shall not have satisfactorily completed the work of the elementary grades. All eligible pupils in the county are entitled to attend the county high school, and it shall be the duty of the board to provide accommodations for such pupils.

7. To admit pupils from other counties, when there is room, upon the payment of such tuition as the board of trustees may prescribe; but at no time shall such pupils continue in such school to the exclusion of pupils residing in the county in which such school is located.

8. To provide, by purchase or otherwise, for school books, school furniture, repair of school buildings, furnishings or equipment and for other things needed in the schoolhouse or on the school grounds or for the use of the school board.

Amd. Sec. 1, Ch. 127, L. 1923.

1271.1. High schools may procure land for gymnasiums and dormitories. The board of trustees of county and district high schools shall have the power to purchase, or lease, sites, buildings or materials, and equipment for a dormitory and gymnasium, or either as they may deem proper and for the best interest of the school. They shall not, however, make any purchase, or enter into any contract, whereby obligations are assumed in excess of the amount of funds on hand, or available through the collection of taxes, either delinquent or for the current year, or the issuance of bonds.

En. Sec. 1, Ch. 152, L. 1925.

1271.2. High school dormitory petty cash fund. The board of trustees of any high school operating and maintaining a dormitory for the use and benefit of the students and teachers of such high school, may set aside out of the general fund, a sum of not to exceed one hundred dollars (\$100), which shall be designated as the dormitory petty cash fund. Such fund shall be placed at the disposal of the matron of such dormitory for the purpose of paying the incidental expenses which must necessarily be paid in cash at the time of delivery. The matron must keep account of said fund as prescribed by the state examiner and said fund shall be replenished by the board of trustees at each regular meeting of the board, upon presentation of proper receipts covering the several disbursements.

En. Sec. 1, Ch. 117, L. 1927.

1275. Tax levy. At the regular April meeting, or at some subsequent meeting, called for such purpose, said trustees shall make an estimate of the amount of funds needed for building purposes, for payment of teachers' wages, and for payment of contingent expenses, and they shall present to the board of county commissioners a certified estimate of the

rate of tax required to raise the amount desired for such purposes, and the board of county commissioners must levy such tax as other county taxes are levied. But in no case shall the tax for such purposes exceed in one year the amount of six mills on the dollar on the taxable property of the county.

If said tax exceeds five mills, the proceeds of five mills shall be apportioned as heretofore provided by law, and the balance of said tax shall, at the option of the county high school board, be used for the support of the county high school alone, or, at its direction, be distributed among the several high schools of the county on the same basis and in the same manner as the other five mills are distributed.

Amd. Sec. 1, Ch. 69, L. 1923; Amd. Sec. 1, Ch. 107, L. 1925.

1280. Accredited county high schools to share county moneys. In any county where a county high school has been established, any school district which maintains high school classes, duly accredited by the state superintendent of public instruction shall be entitled on such accreditation to share in all county high school moneys levied and collected for maintenance, and the money derived from such levy shall be apportioned by the county superintendent of schools to the several accredited high schools in the county, according to the average daily attendance in accredited high school classes for the school year next preceding as determined by the said county superintendent. In making the apportionment provided for in this section, the attendance of all high school pupils residing in the county, in which the high school is located, shall be included without regard to residence in the particular district where the pupil attends.

Amd. Sec. 1, Ch. 19, L. 1923.

1280.1. Segregation county and district high school moneys—Warrants. The county treasurer in each county where a county high school is maintained shall keep the funds collected for maintenance of the county high school and district high schools in a separate fund and shall not pay out such funds collected for the maintenance of county and district high schools until such time as the county superintendent has determined the proportion of such funds to which the county high school and each district high school is entitled and has apportioned such funds as provided in section 1280 of the Revised Codes of Montana, 1921, as amended by chapter 19 of the Session Laws of 1923; provided, that county high schools may be permitted to draw warrants against such fund before allotment not in excess of one-half of the county high school's share in the anticipated revenues and provided that warrants may be paid out of any funds of the county high school not subject to apportionment.

En. Sec. 1, Ch. 96, L. 1925.

1281. Special district high school tax. In any county not maintaining a county high school but in which one or more districts maintain high school classes duly accredited for one (1), two (2), three (3) or four (4) years of high school work by the state board of education, a special tax, not exceeding five mills on each dollar of taxable property in the county,

shall be made for the benefit of such schools. When such levy is to be made, the chairman of the board of trustees in each school district in which an accredited high school has been maintained during the preceding school year shall, on or before the first day of August in each year, recommend and advise the board of county commissioners as to the amount of money required, and the board of county commissioners shall thereupon fix such a levy, not exceeding five (5) mills, as will raise sufficient money to meet the expenses of such accredited high school for maintenance during the ensuing school year, and the money derived from such levy shall be apportioned by the county superintendent of schools to the several districts in which such accredited high schools are maintained as follows: Two-thirds of the total amount in proportion to the number of teachers employed and necessary for the effective instruction of pupils in accredited high school work, and one-third of the total amount in proportion to the total number of days' attendance by pupils doing accredited high school work for the school year next preceding, as determined by the said county superintendent, provided that the number of teachers allotted to any school for the purpose of such apportionment shall be determined in accordance with a uniform method to be announced by the state board of education.

Amd. Sec. 1, Ch. 132, L. 1927.

1281A. Status of accredited high schools—Apportionment tax. Each accredited high school maintained by a joint school district shall for all the purposes of this chapter be considered as situated in each county in which any part of said joint school district is situated, regardless of the actual situs of such school; and each such joint district maintaining an accredited high school within the meaning of this chapter shall share in the apportionment of the proceeds of the high school tax of each such county according to the provisions of section 1280 of this code, if such county maintains a high school, or according to the provisions of section 1281 if such county does not maintain a high school; provided, however, that in computing the average daily attendance of such high school as provided by sections 1280 and 1281 the county superintendent shall include only the eligible pupils residing within the said county; and provided further, that in computing the number of teachers employed and necessary for the effective instruction of pupils in accredited high school work in such districts as provided by section 1281 the county superintendent shall include only that proportion of the total number of teachers so employed which the average daily attendance of eligible pupils attending such joint district high schools and residing within the said county bears to the total average daily attendance of such school.

En. Sec. 1, Ch. 10, L. 1925.

1281.1. Scope of act. This act shall be in full force and effect from and after its passage and approval and shall govern the apportionment of the proceeds of all county high school levies not theretofore apportioned.

En. Sec. 2, Ch. 10, L. 1925.

1282. Free attendance—Fees when required. Attendance at any high school to whose support such money is apportioned in accordance with

the provisions of this act shall be free to all eligible pupils residing in the county in which said accredited high school is located; provided, however, that the board of trustees shall have power to require students in the commercial, manual training, domestic science, scientific and agricultural courses to pay a fee for the use of typewriters and other special equipment and to cover the costs of breakage and material used in the laboratories and shops of the school, which fee shall not exceed the actual cost to the high school of the material used or broken, or the reasonable value of the use of any special equipment.

Amd. Sec. 2, Ch. 19, L. 1923; Amd. Sec. 1, Ch. 102, L. 1925.

1282.1. Proportion of tax, how computed—Attendance basis. No attendance of a high school student outside of the county of his residence shall be counted in determining attendance, except, in cases where a high school student by reason of convenience to his place of residence or by reason of employment, and for reason of vocational training not otherwise available attends a high school in another county, and such attendance is approved by the county superintendent of schools of the county of his residence; the county commissioners of said county are authorized, in their discretion, to direct the county treasurer to pay over to the school district or county high school where the pupil attends a proportionate share of the high school tax levied in said county, the amount to be determined in the manner in which the distribution of high school funds is made in the county in which the students concerned reside.

En. Sec. 3, Ch. 19, L. 1923.

1282.2. Applies to 1922 taxes and thereafter. The distribution provided for by this act shall apply to undistributed taxes collected for the year 1922, and thereafter.

En. Sec. 4, Ch. 19, L. 1923.

1294. Superintendent of city and county high schools—Appointment. Whenever, after the passage and approval of this act, the total number of school children enrolled in any county high school and in the city schools located in the same city or town with said county high school shall be fewer than nine hundred, the board of trustees of the school district in which such city schools are located, and the board of trustees of such county high school (said boards being hereinafter designated as "the joint boards") may, if, in the judgment of the said joint board it will be for the best interests of the said school or schools, jointly appoint a person to be known as the superintendent of city and high schools, who shall supervise the operation of both the high school and city schools in such district.

Amd. Sec. 1, Ch. 126, L. 1923.

1301.1. Discontinuance county high schools—Procedure. Any county in this state in which a county high school has been or may hereafter be established may discontinue and abolish said county high school and make disposal of the property belonging to the same in the manner hereinafter provided. Provided, however, the provisions of this act shall not

apply where thirty per cent or more of the students enrolled in any county high school during the last preceding school year, whose parents reside outside of the school district in which such high school is located.

En. Sec. 1, Ch. 125, L. 1923.

1301.2. Petition — Election — Voting — Ballots — Findings. Whenever, between the first of July and the first day of September of any general election year, one hundred and fifty tax-paying freeholders and qualified electors in any county shall petition the board of county commissioners requesting that the county high school be abolished in their county, the county clerk shall give notice by publication in the official paper of the county on or before September 15th, following, that such petition has been filed. It shall be the duty of the board of county commissioners of said county to submit to the qualified electors of said county at the next general election the question of the abolishment of the county high school of said county. Said election shall be advertised, held and conducted and the votes canvassed and returns made in the same manner as is provided by law for the submission of questions to the people of a county. The qualified electors shall vote by ballot for or against the abolishment of the county high school. Provided, the term qualified electors as used in this act shall include only such qualified electors under the general school laws of the state as are also freeholders and taxpayers of the county as shown by the last preceding assessment-roll. The ballots shall substantially be in the following form:

For the abolishment of the county high school.

Against the abolishment of the county high school.

An elector desiring to vote for the abolishment of the county high school shall do so by placing an "X" before the clause, "For the abolishment of the county high school," which shall be a vote in favor of abolishing the county high school. An elector desiring to vote against the abolishment of the county high school shall do so by placing an "X" before the clause, "Against the abolishment of the county high school." If a majority of all the votes cast at such election shall be in favor of the abolishment of said county high school, the board of county commissioners shall make and enter upon their minutes a finding in accordance therewith and after July 1st of the following year, said county high school shall be discontinued and abolished. Provided, however, if a majority of all the votes cast at such election shall be against the abolishment of the county high school, another election for such purpose shall not be called for four years.

En. Sec. 2, Ch. 125, L. 1923.

1301.3. Unexpended money—Disposal. Upon such discontinuance becoming effective, all unexpended moneys if any of said county high school shall be applied in the following manner:

1st. To the payment of outstanding warrants of said county high school.

2d. To the payment of the interest or principal of outstanding bonds of said county high school.

3d. To be divided among the several school districts of the county maintaining accredited high school classes, according to the average daily attendance at such high school classes for the school year next preceding as determined by the county superintendent of schools.

En. Sec. 2, Ch. 125, L. 1923.

1301.4. Payment of bonds and warrants. All outstanding bonds, warrants and other legal obligations of said county high school shall be paid in the same manner as though said county high school had not been discontinued and it shall be the duty of the county commissioners annually to ascertain the amount of said bonds, warrants or other outstanding indebtedness and to make such annual tax levies, not in excess of the total amount authorized by law, as may be necessary to retire and pay such bonds, warrants or other outstanding obligations of said county high school.

En. Sec. 4, Ch. 125, L. 1923.

1301.5. Disposal of delinquent taxes. All delinquent taxes levied for the support of any county high school which has thereafter been discontinued shall, whenever the same are collected, be used in the manner provided by section 1281 of the Revised Codes of Montana of 1921 for the maintenance of high school classes in counties not having county high schools.

En. Sec. 5, Ch. 125, L. 1923.

1301.6. Procedure for disposal of property. Upon the discontinuance of any county high school all the property both real and personal of said county high school shall be disposed of in the manner following: Any district judge of the judicial district in which such county is situated, shall on application of the board of county commissioners, appoint three competent persons to appraise the value of the property both real and personal, belonging to said county high school or used in connection therewith. In making such appraisal, deterioration, second-hand value and the special adaptability or lack of adaptability of such property for any other use shall be taken into consideration by the appraisers. Said appraisers shall receive the sum of \$5 per day each for their services, payable out of the county high school fund of the county. They shall make their appraisal and return the same to the board of county commissioners of the county within ten days of the date of their appointment.

En. Sec. 6, Ch. 125, L. 1923.

1301.7. Sale of property. Said board of county commissioners may thereupon at any time, at either public or private sale and either with or without advertisement of such sale, sell or dispose of all or any part of the property belonging to said high school or used in connection therewith, and shall be authorized to make and execute on behalf of the county such bills of sale, deed or other conveyances as may be necessary to transfer the title to said property to the purchaser thereof.

En. Sec. 7, Ch. 125, L. 1923.

1301.8. Sales, how made—Reappraisement. All sales shall be for cash with preference given to a proposed use for high school, common school or other public school purposes, and no property shall be sold for less than its appraised value, provided however that the district judge appointing said appraisers, or his successor in office or another judge designated by him, may, upon the application of any person desiring to purchase said property or any part thereof, or on the application of the board of county commissioners, conduct a hearing upon the question of the reasonable value of said property and may thereupon increase or decrease the valuation put thereon by the appraisers.

En. Sec. 8, Ch. 125, L. 1923.

1301.9. Disposal of money. All money received from the sale of said property shall be disposed of in the manner and in the order specified in section 7 (2) of this act.

En. Sec. 9, Ch. 125, L. 1923.

CHAPTER 106.

THE MILITIA—GENERAL REGULATIONS.

1373.1. Disposal of Spanish-American war fund. That the governor remain the trustee of the Spanish-American war fund; that from and after the passage of this act the said trustee, in the usual manner of paying funds from this account, shall pay, out of the interest on investments made with the money which remained of a fund appropriated by the United States government on June 25, 1908, to pay the Montana national guard from the time of call until muster into the service of the United States for the Spanish-American War, to the quartermaster of the United Spanish War Veterans, department of Montana, the sum of two hundred thirty-seven and 50/100 dollars (\$237.50) on July 31st and two hundred thirty-seven and 50/100 dollars (\$237.50) on January 31st of each year for the current use of said department.

En. Sec. 1, Ch. 99, L. 1927.

CHAPTER 109.

GENERAL PROVISIONS AND EMERGENCY CLAUSE.

1401. Exemptions from jury duty and poll tax. Every commissioned officer and every enlisted man of the national guard of Montana, the organized reserves of the national guard of Montana, the organized reserves of the army of the United States, and all persons receiving government compensation for disability received while serving with the United States army during the World War, shall be exempt from all jury duty, and from the payment of poll tax, or head tax, of every description, during the term of his service in the national guard, the organized reserves of the national guard or the organized reserves of the army of the United States, or while receiving government compensation as aforesaid.

Amd. Sec. 1, Ch. 51, L. 1925.

For text treatment of this subject see vol. 17 Cal. Jur. 248.

CHAPTER 110.

INSANE ASYLUM.

1415. Superintendent of asylum and assistant—Appointment, removal and salary.—A superintendent of the state insane asylum and an assistant superintendent, who shall be regularly licensed physicians of the state of Montana, shall be appointed by the governor, and such appointments must be transmitted to and approved by the senate. The tenure of office of the appointees shall be for a period of four years from the date of appointment, and until their successors have been appointed and qualified. The salary of the superintendent is hereby fixed at the sum of four thousand (\$4,000) dollars per year, the salary of the assistant superintendent at three thousand (\$3,000) dollars per year, payable in monthly installments of one-twelfth each at the end of each and every month.

The superintendent and the assistant superintendent in addition to the salaries above mentioned shall be entitled to draw from the asylum commissary food supplies for their respective families, not to exceed, however, in value the sum of fifteen hundred (\$1500) dollars per year for each family. Such food supplies so drawn shall be accounted for to the board of commissioners for the insane, in the same manner as other supplies used at the insane asylum.

They shall be subject to removal by the state board of commissioners for the insane at any time for misfeasance, nonfeasance, or malfeasance in office, but before the superintendent or the assistant superintendent be so removed, formal charges in writing must be preferred, and the superintendent or the assistant charged shall be given opportunity to appear and defend himself against any such charges. When charges shall have been preferred asking the removal of the superintendent or the assistant superintendent notice of the time and place of hearing of said charges shall be served upon the accused at least five days prior to the day set for the hearing; provided, however, that when such charges have been preferred, the state board of commissioners for the insane shall have the power and authority to suspend the accused until after the determination of the charges preferred against him.

Amd. Sec. 1, Ch. 42, L. 1923.

CHAPTER 111A.

STERILIZATION OF INMATES OF CUSTODIAL INSTITUTIONS.

1455.1. Title of act. This act shall be known as the "Eugenical Sterilization Law."

En. Sec. 1, Ch. 164, L. 1923.

Asexualization or sterilization of mental defectives, note, 40 A. L. R. 535.

1455.2. Definition of terms. For the purpose of the act the following terms (a) heredity, (b) procreate, (c) custodial institution, (d) inmate, (e) eugenical sterilization, are hereby defined as follows:

(a) Heredity in the human species is the transmission, through spermatozoon and ovum, of physical, physiological and psychological qualities from parents to offspring.

(b) Procreate means to beget or to conceive offspring, and applies equally to males and females.

(c) Custodial institution is a habitation which provides food and lodging, restraint, treatment, training, care or residence for inmates declared mentally delinquent through constituted legal channels.

(d) An inmate is an idiot, feeble-minded, insane or epileptic person who is treated, trained, or cared for within a custodial institution.

(e) Eugenical sterilization is herein defined as vasectomy, or salpingectomy, or such adequate medical treatment which will surely and permanently nullify the power to procreate offspring, to achieve permanent sexual sterility and the highest therapeutic benefits to the patient.

En. Sec. 2, Ch. 164, L. 1923.

1455.3. State board of eugenics. The state board of eugenics is hereby created and established for the state of Montana. It shall consist of: The chief physician of each custodial institution, the president of the State Medical Association, a female member named by the State Medical Association, and the secretary of the state board of health, the last named to be chairman of the board.

En. Sec. 3, Ch. 164, L. 1923.

1455.4. Duties of the state board of eugenics. It shall be the duty of this board to approve or disapprove certificate of sterilization submitted to them by the chief physician of custodial institution of inmate as provided in section 5 of this act and to review the decision of the said chief physician in case of nonconsent on the part of the guardian, or best friend as provided in section 6. This board is also hereby empowered to exercise general supervision of matters pertaining to sterilization, over the chief physician and assistants in custodial institutions, and require from them proper records and data for the determination of the efficiency, benefits and specific efforts of eugenical sterilization.

En. Sec. 4, Ch. 164, L. 1923.

1455.5. Responsibility for sterilization. The sterilization shall be performed by, or under the supervision of the chief physician of the custodial institution of said inmate, whenever he, by his competent examination, and upon the approval of the state board of eugenics finds the said inmate or inmates, to fall within the above-named class or classes; provided, however, that before this sterilization takes place it shall be the duty of the said chief physician to fill out appropriate certificate of said inmate or inmates to be sterilized and present same to the state board of eugenics and secure that board's approval thereof, the approval to be evidenced by the appropriate indorsement on the back of said certificate by the secretary of said board.

En. Sec. 5, Ch. 164, L. 1923.

1455.6. Consent. Before taking out the certificate mentioned in the above paragraph it shall be the duty of the physician to secure the consent of the legal guardian of said inmate and in case such inmate has no legal guardian, then the consent of his or her nearest known kin within the

state of Montana and if such inmate has no known kin within the state of Montana, then the consent of the custodial guardian of such inmate. In all cases when this consent is refused, it should be noted on the certificate by the chief physician, and it then becomes his duty to notify the inmate and his guardian, or nearest known kin within the state of Montana, and in case such inmate has no known kin within the state of Montana, then the custodial guardian of such inmate, of the proposed sterilization, setting a date for him or them to appear before the state board of eugenics and to show cause why the sterilization should not take place. It shall then be the duty of the state board of eugenics to withhold the approval of the sterilization of said inmate until the said board has heard and passed upon the merits of the objection. At the hearing it shall be the duty of the state board of eugenics either to approve or disapprove the sterilization.

Failure of complainants to appear at the hearing after due notice shall be considered as a waiver of all objections.

Upon the approval of the state board of eugenics, the secretary thereof shall indorse the approval on the back of the sterilization certificate of the inmate, and the chief physician shall cause sterilization to proceed as though the consent were given.

All decisions of the state board of eugenics shall be appealable to the district court of the district in which the custodial institution of the inmate is located by the objecting party or parties hereinbefore mentioned filing a petition against the state board of eugenics in the said court, in which case sterilization proceedings shall be suspended until final disposition of the case by the court.

En. Sec. 6, Ch. 164, L. 1923.

1455.7. Liability. Neither the members of the state board of eugenics, the chief physicians, nor assistants concerned, nor any other persons legally participating in the execution of the provisions of this act, shall be liable either civilly or criminally on account of said participation provided, however, that sterilization of the said inmate or inmates, by the chief physician of the custodial institution or his assistants, for other than the purpose named in the act, or by fraud or duress, or without the approval of the state board of eugenics, shall constitute a felony punishable by a fine of not more than \$1,000, or imprisonment in the state prison for no more than five years, or both.

En. Sec. 7, Ch. 164, L. 1923.

1455.8. Purpose of findings and orders. The purpose of said findings and orders of said board and any operation performed thereunder, shall be for the betterment of the physical, mental, neural or psychic condition of said inmate, or to protect society from the menace of procreation by said inmate, and not in any manner as a punitive measure.

En. Sec. 8, Ch. 164, L. 1923.

CHAPTER 115.

TUBERCULOSIS SANITARIUM.

1520. Admission of patients to sanitarium — Soldiers, sailors and marines. The executive board of said sanitarium is hereby given power and authority to receive therein patients who have no ability to pay, but no person shall be admitted to the sanitarium who has not been a citizen of this state for at least one year, excepting that a female who has been a resident of the state for at least five months preceding the date of the application may be admitted, though not a citizen. Every person desiring free treatment in said sanitarium shall apply to the local authorities of his or her town, city or county, having charge of the relief of the poor, who shall thereupon issue a written request to the president of said sanitarium for the admission and treatment of such person. Such request shall state in writing whether the person is able to pay for his or her care and treatment while at the sanitarium, which request and statement shall be kept on file by the president in a book kept for that purpose in the order of their receipt by him. No person shall be admitted as a patient in said institution without certificate of an examining physician, certifying that such applicant is suffering from tuberculosis, or what is commonly called miner's consumption, and, if upon the reception of a person at such sanitarium, it is found by the authorities thereof that he or she is not suffering from tuberculosis or miner's consumption, he or she shall be returned to the place of his or her residence, and the expenses of transportation to and from the sanitarium shall be paid by the county of which he or she is a resident. Admissions to said sanitarium shall be made in the order in which the names of applicants shall appear upon the application book to be kept as above provided by the president of said sanitarium, in so far as such applicants are subsequently certified by the said examining physician to be suffering from tuberculosis or miner's consumption; provided, however, that where the next patient in order is a man and the only accommodations available in the sanitarium are for women or children, then women or children shall be admitted in their proper order and vice versa. Every person who is declared, as herein provided, to be unable to pay for his or her care and treatment, shall be transported to and from the sanitarium at the expense of said local authorities, and cared for, treated and maintained therein at the expense of the county or municipality which would otherwise be chargeable with the support of such poor or indigent persons, and the expense of transportation, treatment, maintenance and actual cost of articles of clothing furnished by the sanitarium to such poor and indigent persons, shall be a county or town charge, as the case may be; provided, further, that any soldier, sailor or marine, who has served in the army or navy of the United States, and was at the time thereof a citizen or had established his residence in the state of Montana, who on discharge therefrom is found to be suffering from tuberculosis, and whose admission to the Montana state tuberculosis sanitarium is requested by the proper federal authorities, shall be entitled to be admitted thereto, and shall be classed for the purpose of admission on the same basis as free patients, and all such soldiers, sailors or marines shall be given

priority for entrance thereto over other applicants in the order in which their applications for admittance are received and filed.

The treasurer of the sanitarium shall collect and receive any sum or sums the federal government may allow or pay for such purpose, and shall pay the same over to the state treasurer.

Amd. Sec. 1, Ch. 4, L. 1927.

1525. Donations, to whom made.

Cited in *Manley v. Harer et al.*, 73 Mont. 253, 262, 235 Pac. 757.

CHAPTER 116.

SOLDIERS' HOME.

1529. Board of managers—Appointment—Term—Removal. The general supervision and government of said home shall be vested in a board of managers, to consist of five members, one of whom shall be the department commander of the Grand Army of the Republic of the state of Montana, or in case the office of department commander of the Grand Army of the Republic of the state of Montana shall be at any time abandoned or discontinued then the department commander of the Spanish-American War Veterans of the state of Montana for the time being shall be a member of the board, and the remaining four shall be appointed by the governor, by and with the advice and consent of the senate. Of the four members so appointed as aforesaid, two shall hold their office for the term of four years and two for the term of two years respectively, and until their successors are appointed and qualified. The governor, at the time of the making of the said appointments, shall designate the period for which each member is appointed, and thereafter every two years the governor shall appoint two members of said board of managers, who shall hold their office for the term of four years, and until their successors are appointed and qualified. The governor shall have the power to remove any member of the board for inefficiency or other good and sufficient cause, and in case of any vacancy in said board by death or otherwise, the governor shall appoint a suitable person to fill the vacancy for the unexpired term. No less than three members of said board of managers shall be ex-soldiers or sailors of the United States, and one of the board shall be a regular practicing physician, duly licensed under the laws of the state of Montana.

Amd. Sec. 1, Ch. 149, L. 1925.

1533. Commandant—Appointment—Salary and duties. The board of managers shall appoint a commandant of the soldiers' home, who shall receive a salary not to exceed one hundred twenty-five dollars (\$125) per month, who shall be a resident of the state of Montana, and shall have served in the army or navy of the United States during the late war of the rebellion or in the Spanish-American War, and shall have received an honorable discharge therefrom.

They shall formulate and publish all necessary rules and regulations to be reasonably and impartially enforced by the commandant of the home, subject to appeal to the board of managers.

All subordinate officials and employees of the home shall preferably be selected from residents of the state who have served in the army or navy of the United States and have been honorably discharged therefrom.

The salaries of the commandant and all subordinate officials and such other employees as may be necessary shall be fixed by said board of managers; provided, that the compensation so paid shall in no case exceed such reasonable and necessary compensation as is paid for like services in similar institutions.

Any such subordinate official or employee may be suspended or discharged by such commandant for inefficiency or misconduct and a statement of the case shall be reported to the said board, who shall upon application offer such official or employee a hearing, and the action thereon of the board shall be final.

Amd. Sec. 1, Ch. 126, L. 1925.

1536. Admissions wives and widows to home. The board of managers of the soldiers' home is authorized and empowered to admit to the privileges of the home under such rules as the board may prescribe, the wives or widows of soldiers or sailors who are inmates or who may be or may have been eligible to admission as inmates and who were married to such soldiers or sailors prior to the year 1912.

Amd. Sec. 2, Ch. 126, L. 1925.

1546. Chaplain — Duties and salary. The board of managers shall select and appoint a chaplain for the soldiers' home, who must be a regular ordained minister of the gospel and who shall hold divine services at the soldiers' home at least twice a month, and who shall also conduct the burial services upon the death of any of the inmates of the home, and shall be paid a salary of not to exceed twenty-five dollars (\$25) per month.

Amd. Sec. 3, Ch. 126, L. 1925.

CHAPTER 117.

THE STATE HISTORICAL LIBRARY.

1560.1. Historical Society of Montana. The historical and miscellaneous library shall hereafter be known as and called the Historical Society of Montana.

En. Sec. 1, Ch. 57, L. 1923.

1560.2. Historial fund. The Montana pioneer historical fund is hereby created for the reception and custody of contributions, legacies, gifts, bequests or devises, for the special purpose of the construction of a Pioneer Historical Society building on the state capitol grounds at Helena, Montana.

En. Sec. 2, Ch. 57, L. 1923.

1560.3. Duties of treasurer—Appointment of commission when. The treasurer of the state of Montana is the custodian of such funds as shall be contributed thereto (by any person) and such funds shall be held inviolate for the purpose named and shall never revert to the general or

any other fund but shall be used for the special purpose herein specified. When the said funds in cash shall amount to the sum of two hundred and fifty thousand dollars (\$250,000) the state treasurer shall so report to the governor of the state of Montana and it shall be the duty of the governor to appoint a Pioneer Historical Society commission, of which commission the lieutenant-governor of the state of Montana for the time being shall be one, the treasurer of the state of Montana for the time being shall be one, the president of the historical society for the time being shall be one, and the president of the Society of Montana Pioneers for the time being shall be one. The said commission shall consist of seven members, three of whom shall be appointed by the governor for the term of four years or until their successors are appointed and qualified or until the duties of said commission as provided herein have been performed. Said commission shall serve without pay.

En. Sec. 3, Ch. 57, L. 1923.

1560.4. Design for permanent building. The said commission is specially charged with the duty of securing a satisfactory design for the permanent home of the Historical Society of Montana and of the Society of Montana Pioneers and to let the contract for the construction of the same and to supervise such construction and furnishing under proper regulations.

En. Sec. 4, Ch. 57, L. 1923.

1560.5. Building for use of society. On the completion and acceptance of said building and the payment of the cost thereof out of the said pioneer historical fund, the same shall be occupied by the Historical Society of Montana and the Society of Montana Pioneers and such societies only.

En. Sec. 5, Ch. 57, L. 1923.

1560.6. Furnishing cost. Out of the said fund shall be retained from the moneys devoted to the construction of said building ten per cent(10%) thereof for the proper furnishing of the said building under the supervision of the said commission aside from the furniture now belonging to the Historical Society of the state.

En. Sec. 6, Ch. 57, L. 1923.

1560.7. Submission of claims. All claims against the said fund shall be sworn to and filed with the secretary of said commission and shall be examined at a regular meeting of the board, and if allowed by the said commission said claims shall be presented to the state board of examiners for approval and payment out of the moneys contained in the said pioneer historical fund.

En. Sec. 7, Ch. 57, L. 1923.

1560.8. Report on completion work. On the completion of the duties devolved herein on the said Pioneer Historical Society commission the said commission shall make a full report of its work and the same shall be dissolved and cease.

En. Sec. 8, Ch. 57, L. 1923.

1560.9. Designation of building lot. When the said commission is appointed the governor of the state or body or commission having charge and control of the state capitol grounds shall designate one full block adjacent to the said capitol and bounded on all sides by a street for such building which shall be satisfactory to said commission and accepted by them before proceeding with the construction of the said building.

En. Sec. 9, Ch. 57, L. 1923.

1560.10. Commission — Quorum — Expenses — Office. A majority of said commission shall constitute a quorum at any meeting and the members thereof may be allowed their necessary traveling expenses for attending such meetings at Helena out of the said pioneer historical fund. The office of said commission is hereby designated to be located at the rooms of the Historical Society of Montana in the capitol building at Helena. The officers of said commission shall consist of a chairman, a vice-chairman, a secretary to be elected by the members thereof and the treasurer of the state of Montana for the time being shall be the treasurer thereof.

En. Sec. 10, Ch. 57, L. 1923.

1560.11. Maintenance building by state. On the completion of the said building and its occupancy as above provided the state of Montana does hereby agree and undertake to perpetually maintain, repair, heat, renew furniture, etc., as required, the same.

En. Sec. 11, Ch. 57, L. 1923.

1560.12. Art gallery. Provision in the design of said building shall be made for an art gallery specially arranged for the fine collection of oil and other portraits and landscapes belonging to the said Historical Society.

En. Sec. 12, Ch. 57, L. 1923.

1560.13. Official seal Historical Society. That the Historical Society of Montana, be, and the same is hereby authorized to adopt and use an official seal for the purpose of authenticating the acts of said society and for all other purposes for which the use of a seal by said society may be deemed proper.

En. Sec. 1, Ch. 13, L. 1927.

1560.14. Design. The design of the seal of said Historical Society of Montana shall be substantially as follows: A central group representing a covered immigrant wagon drawn by two yoke of oxen, showing prairie in the foreground, mountains in the background, and directly beneath it the figures "1865." Said seal shall be two inches in diameter and surrounded by the words, "Historical Society of Montana. Seal."

En. Sec. 2, Ch. 13, L. 1927.

CHAPTER 124.

HIGHWAYS—DEFINITION AND CLASSIFICATION.

1612. Public highways defined.

A right of way over public lands granted by section 2477, U. S. Rev. Stats., for the construction of highways, does not become operative until accepted by the public by constructing a public highway according to the provisions of the laws of the state in which the lands are located. Moulton et al.

v. Irish et al., 67 Mont. 504, 218 Pac. 1053; City of Helena v. Helena Light & Ry. Co., 63 Mont. 108, 120, 207 Pac. 337.

For text treatment of this subject see vol. 13 Cal. Jur. 309.

CHAPTER 125.

ROAD TAXES AND BONDS.

1617. Road tax levy—General road tax.

Cited in State ex rel. Case v. Bolles et al., 74 Mont. 54, 65, 238 Pac. 586.

CHAPTER 126.

SUPERVISION OF PUBLIC HIGHWAYS.

1622. Powers and duties of county commissioners respecting highways. The board of county commissioners of the several counties of the state have general supervision over the highways within their respective counties.

1. They may, in their discretion, keep the county divided into suitable road districts, place each of such road districts in charge of a competent road supervisor, and order and direct each of such supervisors concerning the work to be done upon the public highway in his district.

2. They may, in their discretion, provide and order the county surveyor, or if the county surveyor is incompetent, some other competent surveyor designated by the board, to prepare suitable plat books and have recorded therein with the county clerk a full description of every public highway within the county, showing each course by bearing and distance, with a full and complete map thereof, together with a record of all other proceedings with reference to the same.

3. They must cause to be surveyed, viewed, laid out, recorded, opened, worked, and maintained such highways as are necessary for public convenience, as in this act provided, and cause to be erected and maintained thereon guide-posts, as provided in this act.

4. They must abolish or abandon in the manner provided in this act such public highways as are not necessary for the public convenience.

5. They must contract, agree for, purchase, or otherwise lawfully acquire the right of way over private property for the use of public highways, and for that purpose institute, when necessary proceeding under sections 9933 to 9958 of the Code of Civil Procedure, paying for such right of way from the general road fund of the county.

6. They may, in their discretion, but subject to the limitation and provisions in the constitution and codes provided, issue bonds upon the faith and credit of the county for the construction or improvements of main highways, state highways, and bridges.

7. They may, in their discretion, but subject to the limitation and restriction provided in the codes for the letting of public contracts, let out by contract the construction, maintenance, and improvement of the public highways, and the construction, maintenance, or repairs of bridges when the amount of work to be done exceeds the sum of one thousand (1,000) dollars.

8. They may, in their discretion, cause to be done whatever may be necessary for the best interests of the roads and road districts of their several counties.

9. They may limit or forbid, temporarily, any traffic or class of traffic, on the public highways or any part thereof, when in their discretion it is necessary that traffic be so restricted in order to preserve and repair such highways.

10. They must make such reports, relating to the state roads under their supervision, to the state highway commission, as may be requested by said commission.

11. They may, in their discretion, employ a competent road builder, who shall, in counties of the first class, be the county surveyor, and who shall be paid for his services not to exceed eight dollars per day and his actual expenses, who shall serve during the pleasure of the board, whose duty it shall be, under the direction and control of said board, to prescribe the time and place, when and where, all work shall be done on the roads of the county; report any delinquency or inefficiency of any road overseer, or any other person employed upon such road, to the board of county commissioners, and perform such other duties as may be prescribed by the said board.

Amd. Sec. 1, Ch. 128, L. 1925.

Cited in State ex rel. McLeod v. District Court, 67 Mont. 164, 169, 215 Pac. 240.

For text treatment of this subject see vol. 7 Cal. Jur. 456 et seq.

1622.1. Control of highways by county surveyor in certain counties.

The county surveyor of all counties having a total registered vote of twenty-three thousand (23,000) or over, at the last general election shall have exclusive control, supervision and direction of all highways, bridges and causeways within his county, and in the exercise of such control, supervision and direction he shall keep all highways and bridges free and clear of all obstructions; cause highways to be graded, when needed, and maintain and repair the same; cause all bridges and causeways to be made, when needed, and keep the same maintained and in good repair and renew the same when destroyed; make all surveys; establish grades; prepare plans, specifications and estimates; keep accurate cost data; approve all claims against the county for all highway, bridge and causeway construction, maintenance and repair prior to presentation to board of county commissioners; employ deputies and men and teams and discharge at his pleasure such deputies, men and teams, and determine how, when and where such deputies, men and teams shall work; purchase and secure all highway and bridge machinery and machinery equipment and tools to be used upon highways and bridges with the approval of the board of county commissioners; purchase and secure all highway, bridge and causeway supplies and materials with the approval of the board of county commissioners; from time to time make reports and estimates of all matters

relating to highways and bridges when required by the board of county commissioners; perform such other duties as are now or which may be hereafter required by law.

En. Sec. 1, Ch. 102, L. 1927.

1622.2. Office of road supervisor abolished. The office of road supervisor is hereby abolished. Any and all laws relating to the powers and duties of road supervisors are hereby made applicable to county surveyors of all counties having a total registered vote of twenty-three thousand (23,000) or over at the last general election in so far as the same are not inconsistent with any of the provisions of this act.

En. Sec. 2, Ch. 102, L. 1927.

1624. Road supervisors—Appointment and compensation.

Cited in *Manley v. Harer et al.*, 73 Mont. 253, 261, 235 Pac. 757.

1627. Removal of obstructions and repair of bridges.

In the matter of repairing defects on a highway, the board of county commissioners can only act as a board; hence one commissioner cannot be held liable in damages for not doing that which he had no power to do. *Riggs v. Webb*, 77 Mont. 80, 249 Pac. 1041.

This section places the specific legal duty upon the board of county commissioners to remove obstructions in a high-

way, and after notice thereof, any member of the board who neglects to do so becomes personally liable under section 4520 for any injury caused thereby, and they are not relieved of liability by merely instructing the road supervisor to erect and maintain barriers. *Becker v. Chapple et al.*, 72 Mont. 199, 232 Pac. 538.

CHAPTER 127.

ESTABLISHMENT, ALTERATION AND VACATING OF PUBLIC HIGHWAYS.

1647. Crossing of railroad, canals, and ditches.

Cited in *Knott v. Pepper*, 74 Mont. 236, 244, 239 Pac. 1037.

CHAPTER 128.

SPECIAL ROAD DISTRICTS.

1652. Corporate capacity and purpose special road districts—Surveyor—County and district bridges. Every special road district No., hereinafter organized and formed as herein provided, is hereby declared to be a corporate body, by the name and style of special road district of the county of, and state of Montana, and in that name may hold property, sue and be sued and make contracts. But nothing in this act shall be deemed or construed to extend to any special road district the right, power, or authority to issue bonds for any purpose whatsoever. The purpose of such road districts is to provide for the proper care, supervision, and maintenance of existing public highways within such road districts, it being the intention of this act that county commissioners and county surveyors, or special deputy county surveyors, as herein provided, shall continue to have and exercise the authority now provided by law for them, in laying out, establishing, and constructing new roads and bridges, and repairing such existing roads and bridges in

the county as the county commissioners may at any time by resolution determine; provided, however, that the county commissioners of the county shall appoint a special deputy county surveyor to do the work of the county surveyor in all cases where the work can be done more economically and efficiently by said deputy. A copy of any such resolution by said commissioners, when passed, shall be by them sent to the secretaries of the districts through which such new road or road repairs may extend. Bridges over twelve feet in length shall be known as "county bridges," and may be constructed by the county. Bridges twelve feet and under shall be known as "district bridges," and be constructed by the special road district wherein the same is located; provided, that nothing in this act shall be construed to exempt any ditch company or owner from the duty of construction or maintenance of any bridges as now provided by law. Except as herein limited, all supervision, repair, and maintenance of roads and highways shall be done by and be a charge upon the special road district; provided, that when the county surveyor or special county surveyor, as provided in this section, may estimate any repair or construction work on any bridge or road to exceed one thousand (\$1,000) dollars per mile in cost in any one year, such repair or construction shall be a charge upon the county.

Amd. Sec. 1, Ch. 141, L. 1923.

CHAPTER 129.

LOCAL IMPROVEMENT DISTRICTS.

1686. Letting of contract—Conditions of same. After the board has made the order creating and establishing the local improvement district, the local committee of supervisors shall let the contract for furnishing the necessary materials and the performance of the work and labor necessary for the construction and completion of said road according to said plans and specifications and under the supervision of the county surveyor they shall advertise for bids for the construction, laying out or improving of such main highway, and fix the time for opening such bids at the office of the board of county commissioners and award such contract to the lowest responsible bidder, except that no contract shall be awarded at a greater sum than the estimate of cost of such work hereinbefore provided for. The said work may be let to one or more contractors or all of same may be let in one contract or in separate contracts in the discretion of said local supervisors. The committee of supervisors may reject any and all bids and before the execution of any contract they shall require a bond satisfactory to them that the contractor will furnish the required material and perform the required work upon the terms specified in the contract and within the time prescribed; and as a bond of indemnity against any direct or indirect damages that shall be suffered or claimed for injury of persons or property during the construction of said improvement and until the same is accepted.

Partial payments may be provided for in the contract, and paid in the manner herein provided when certified by the county surveyor and committee of supervisors to an amount not exceeding eighty per cent of the value of the work done and the materials, provisions and supplies furnished and the said contract shall provide that at least twenty per cent

of the estimated amount shall be retained to secure the payment to laborers who have labored on such work and to those who have furnished materials, provisions and supplies (and supplies) for the prosecution of such work, and such laborers and those who have furnished materials, provisions and supplies shall have thirty days after the work has been completed or material, provisions and supplies furnished, for lien on such twenty per centum so reserved; providing, notice thereof in writing shall have been filed with the committee of supervisors within said thirty days, which lien shall be senior to all other liens, such as judgment, garnishment, or judgment liens, and no improvements or construction shall be deemed to be completed until the committee of supervisors have filed with the clerk of the board of county commissioners a statement signed by a majority of them, same to have been completed and that all labor, material, provisions and supply liens have been discharged. Such contract shall be executed in the name and on the behalf of the county by the board of county commissioners and attested with the seal thereof, for the use and benefit of said local improvement district; but such county shall not thereby be rendered subject to any claim or liability in a greater sum than that agreed upon with said proposed assessment district as provided in the order fixing the amount chargeable to said county.

Amd. Sec. 1, Ch. 13, L. 1925.

CHAPTER 130.

PUBLIC BRIDGES.

1704. Bridge Tax—Levy and collection.

Cited in State ex rel. Case v. Bolles et al., 74 Mont. 54, 65, 238 Pac. 586.

CHAPTER 134.

SPEED AND TRAFFIC REGULATIONS.

1742. Speed regulations.

The rule as to the right and mutual duties of automobiles and bicycles and the drivers thereof under this section was stated in Pratt v. Kistler, 72 Mont. 356, 233 Pac. 600.

Sections 1742-1763, requiring the registration of motor vehicles and the payment of the prescribed fee, are not open to the constitutional objection that they are a revenue measure, but they may be justified as a reasonable police regula-

tion. State v. Pepper, 70 Mont. 596, 226 Pac. 1108.

Pedestrians and automobilists have equal rights in the use of the public highways, in the exercise of which the former must use ordinary care for their own safety and the latter must drive their automobiles in accordance with the requirements of this section. Green v. Bohm, 65 Mont. 399, 211 Pac. 320.

1743. Traffic regulation. Every person operating or driving a vehicle of any character upon a public street or highway of this state must observe the following traffic regulations:

1. Traffic must everywhere and at all times keep to the right. Vehicles moving in opposite directions must pass each other by turning to the right. Vehicles moving in the same direction must pass by turning to the left on the part of the one passing, and turning to the right on the part of the one being passed. At all (turns) curves, corners, and crossings, and particularly where the view is in any manner obstructed both

in cities and towns and in the country, vehicles must slow down and be under complete control and must keep to the right, so that if the width of the road permits, there is room on their left for the passing vehicle that may at any time suddenly or unexpectedly appear.

2. In cities, towns or villages where traffic is heavy, slow moving traffic must keep as near as possible to the curb. Vehicles turning corners to the right must keep close to the right-hand curb; in turning to the left, vehicles must keep to the right and swing full around the intersection of the center lines of the street. The operator or driver of any vehicle desiring for any reason, either at or between street crossings, to turn to the left, must warn all following by extending his arm full from the shoulder for a period of not less than two seconds, and sufficiently in advance of turning to enable anyone following to stop or make the necessary change in course. Provided, however, that if the motor vehicle operated and driven be equipped in the rear with a signal lamp with direction indicators which will indicate clearly and positively the direction the operator or driver desires for any reason to turn, whether to the right or to the left, either at or between street crossings, and warning is given all following by means of such signal lamp for a period of not less than two seconds, and sufficiently in advance of turning to enable anyone following to stop or make the necessary change in course it shall not be necessary to extend the arm and the foregoing provision relating thereto shall be of no force or effect during the period between one hour after sunset and one hour before sunrise.

3. The operator or driver of any vehicle upon a public highway, upon being overtaken by another vehicle and receiving a signal or notice from the operator or driver of the vehicle in the rear that he desires to pass must, without necessary delay make every reasonable effort to permit him to do so.

4. No motor vehicle operating upon a public street or highway of this state shall pass on either side thereof a street-car which has stopped to receive or discharge passengers at a less distance than eight feet, nor at a speed greater than six miles per hour.

Amd. Sec. 1, Ch. 80, L. 1927.

The word "crossing" as used in this section with relation of the duty of drivers at crossings, held to refer to the intersection of a highway and a railroad or of two highways, and therefore an instruction based upon that section offered by defendant, through whose negligence in driving on a private way across the highway with the intention of entering a gate on the opposite side, plaintiff was injured, was properly refused as not applicable. *Knott v. Pepper*, 74 Mont. 236, 239 Pac. 1037.

A pedestrian and the driver of an automobile have equal rights in the use of the public highway and the latter must operate his car in the manner specified in this section; failure to do so renders him liable in damages unless the person injured, through his contributory negligence, precludes his right to recover. *McGregor v. Weinstein*, 70 Mont. 340, 225 Pac. 615.

In an action by a pedestrian against the driver of an automobile for personal injuries sustained at a street crossing, an instruction based upon subdivisions 1 and 2 of this section, requiring the latter in turning corners to keep close to the curb, held prejudicially erroneous where the presence of a telephone pole in the highway about six feet from the curb near the point of the accident rendered it impossible for the driver to obey the mandate of the statute, its provisions being elastic, not rigid, to be applied in the light of physical conditions existing in the avenues of traffic. *McGregor v. Weinstein*, 70 Mont. 340, 225 Pac. 615.

Plaintiff riding a motorcycle in a city street was endeavoring to pass a truck going in the same direction to the left and sounded the horn; the driver of the truck suddenly turned to the left without giving the warning required by this section, causing a collision. There was no evidence that plaintiff had time to stop

or change his course. Held, that plaintiff was not guilty of contributory negligence as a matter of law. *Haney v. Mutual Creamery Co.*, 67 Mont. 278, 215 Pac. 656.

In an action for damages for injuries sustained in a collision between plaintiff's motorcycle and defendant's automobile, the allegation in the complaint that defendant was on the left side of the road

at the time of the accident, in disregard of the provision of the statute that vehicles must keep to the right, made out a prima facie charge of negligence. *McGinnis v. Phillips*, 62 Mont. 223, 205 Pac. 215.

Conflict between statutes and local regulations, note, 21 A. L. R. 1187.

1744.1. Drivers of motor vehicles—Duty when accident occurs—Penalties. In case of accident or injury to a person or persons or property on the public highways, due to the operation thereon of any vehicle, the person operating or driving shall stop, and upon request of the person or persons injured or whose property has suffered injury, or upon request of any other person present, must give his true name and correct place of residence, and the registration number of his vehicle, if it be a motor vehicle, and if such person operating or driving is not the owner thereof, the correct name and address of the owner of such vehicle. In the event the person injured or whose property has suffered injury, is unable to make such request, the driver of such vehicle must make such report as required by this act to the nearest sheriff's office or nearest office of chief of police within a period of twenty-four (24) hours after such accident has occurred or injury sustained.

Any person violating the provisions of this act or failing to give the information as required by this act, shall be guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine of not less than twenty-five (\$25) dollars, or more than five hundred (\$500) dollars, or not less than ten (10) days imprisonment or more than three months imprisonment or by both such fine and imprisonment.

En. Sec. 1, Ch. 12, L. 1923.

1748. Liability of owner for negligence of driver.

Under this section, the owner of a property while acting within the scope of his employment. *Rohan v. Sherman* passengers is liable for all damage done & Reed et al., 61 Mont. 519, 202 Pac. 749. by a driver in his employ to person or

1749. Regulation moving machines on highways. All persons owning, controlling, operating or managing threshing-machines, steam engines, sawmills, or any heavy loads [of] whatever kind or nature, are required in moving the same over public highways, to lay down planks, not less than one foot wide, three inches in thickness, and of sufficient length on the floors of all bridges and culverts situated on the public highways, while crossing the same, for the wheels of said threshing-machines, steam engines, sawmills, or other vehicles carrying heavy loads of any kind to run on; provided, that this section shall not apply to any threshing-machines, sawmill, steam engine, or other vehicle carrying heavy loads not exceeding six tons in weight; provided further, that owners and operators of trucks carrying a net load over and above the weight of the truck itself of more than six tons, are hereby made personally liable for breakage or damage done to bridges or culverts, when same have not been planked in accordance with the provisions of this section.

Amd. Sec. 1, Ch. 164, L. 1925.

1749.1. Sleigh runners, regulation of size. On and after the first day of January, 1924, it shall be unlawful for any person, firm or corporation in this state to sell any new or first hand draft sleigh, to any person or persons residing in this state for use herein, unless the runners of such sleigh shall measure from center to center four feet and six inches or wider. And on and after January 1, 1928, it shall be unlawful for any person or persons to use upon any of the public highways of this state any sleigh, unless the runners shall measure from center to center four feet and six inches, or wider.

En. Sec. 1, Ch. 101, L. 1923.

1749.2. Penalty. Any person, firm or corporation violating any of the provisions of this act shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than ten dollars (\$10) nor more than twenty-five dollars (\$25).

En. Sec. 2, Ch. 101, L. 1923.

1753. Accessories required upon motor vehicles.

In an action for damages for personal injuries sustained in a collision after dark between plaintiff's automobile, the lights of which were burning, and that of the defendant without lights, in which the negligence alleged was defendant's driving without lights when a reasonably prudent man would have had them burning, an instruction that if the accident

occurred before the hour fixed by this section, for having lights, the absence of lights could not be deemed negligence, was properly refused, the hour fixed by statute being immaterial if the conditions were such as to require the display of lights. *Knott v. Pepper*, 74 Mont. 236, 239 Pac. 1037.

1754. Penalties for violation of act—Reporting convictions—Duty of officers.

Cited in *State v. Pepper*, 70 Mont. 596, 603, 226 Pac. 1108.

CHAPTER 135.

REGISTRATION OF MOTOR VEHICLES—CERTIFICATES OF TITLE.

1755. Duties of registrar of motor vehicles—Records. 1. The warden of the state penitentiary be, and is hereby constituted the registrar of motor vehicles, of motor dealers and of chauffeurs, and that as such it shall be his duty to keep a record as hereinafter specified of all motor vehicles of every kind, of all dealers in motor vehicles, and of chauffeurs, and to assign to each a distinctive serial registration number.

2. In the case of motor vehicles the record shall show the following: Name of owner, residence by county, business address, manufacturer of car, manufacturer's designation of style of car, manufacturer's serial number, year of manufacture, character of motive power, manufacturer's horse-power rating and the distinctive serial number assigned such car, also whether or not to be used exclusively for commercial purposes, and if so, manufacturer's rating of load carrying capacity, and such other information as may from time to time be found desirable.

3. In the case of dealers the record shall show the name of the applicant, his residence, and address by town and county, his business address, and the distinctive number assigned him.

4. The registrar of motor vehicles shall qualify by giving a bond of fifty thousand dollars (\$50,000), providing for the faithful performance of his duty. He shall be entitled to one deputy at a salary not to exceed three thousand dollars (\$3,000) and two civilian clerks at a salary not to exceed one hundred fifty dollars (\$150) per month, who shall be selected by said registrar of motor vehicles, the salary of which deputy and the salaries of which clerks shall be fixed by the state board of examiners. The remaining clerical help shall be selected by the registrar of motor vehicles from among the inmates of the state penitentiary.

5. All office equipment, books, files and records belonging to the motor vehicle department as now located shall be transferred to the state penitentiary.

6. The registrar of motor vehicles shall on the twenty-fifth day of each month transmit to the state treasurer all moneys collected by him.

7. The registrar of motor vehicles shall at the end of each month prepare lists of licenses sold for the current month, showing the number of license sold, the name and address of party to whom sold, engine number and make of car. Such lists shall be distributed to the sheriffs and clerk and recorder and assessors of each county of the state by the registrar of motor vehicles.

Amd. Sec. 1, Ch. 177, L. 1925; Amd. Sec. 1, Ch. 129, L. 1927.

1759.1. Information required on application for registration of automobiles. That in addition to any information required by section 1759 of the Revised Codes of Montana of 1921, every owner of a motor vehicle operated or driven upon the public highway of this state, shall, for each motor vehicle owned, except as otherwise expressly provided, in his verified application for the registration thereof on a blank to be furnished by the registrar of motor vehicles, include the following information:

1. Whether such applicant was the owner of such motor vehicle on the first Monday of March of the year next preceding the year for which registration is applied.

2. And if so whether or not the property tax on such motor vehicle has been paid for such year.

3. And such other information relating to taxation as may be required by the state board of equalization.

En. Sec. 1, Ch. 123, L. 1927.

1759.2. List of delinquent motor vehicle taxes. The county treasurer of each county, shall, not later than the second Monday of December of each year, mail to the registrar of motor vehicles of the state of Montana, a certified list of the names of all owners of motor vehicles, who have not paid the property taxes on such motor vehicles for the current year, and which said taxes are not a lien on the real estate of the owner, as shown by the records in his office. Such list shall also include the engine number of such motor vehicle.

En. Sec. 2, Ch. 123, L. 1927.

1759.3. Procedure if property tax delinquent. The registrar of motor vehicles shall compare and check each application for registration with

the said county treasurer's list of names of delinquents of the county wherein the applicant resides, and if he finds therefrom, or from any other source, that the property tax has not been paid on such motor vehicle for the year next preceding the year for which registration is applied, he shall immediately notify the applicant by mail of such finding and further that he cannot issue the registration certificate therefor, until such delinquent property tax has been paid and the proof thereof, by receipt or certificate of the proper county treasurer, has been filed in his office. And the registrar of motor vehicles shall not issue such registration certificate until such delinquent property tax has been paid and such proof thereof has been filed in his office.

En. Sec. 3, Ch. 123, L. 1927.

1759.4. Regulation of late registrations. Whenever any application is made for the registration of a motor vehicle after the thirtieth day of April, in any year, the applicant shall be required to pay, in addition to the registration fee required therefor, a penalty of ten per centum (10%) of such registration fee for having failed to secure registration of such motor vehicle prior to such date; provided, however, that no such penalty shall be required to be paid when the applicant shall present with his application:

1. A certificate from a dealer in this state to the effect that such motor vehicle was not sold by such dealer as a used or second-hand vehicle but as a new vehicle, and that it was not delivered to the purchaser by such dealer until after the thirtieth day of April in the year in which such application for registration is made;

2. Or, a certificate from a dealer in this state to the effect that such motor vehicle was not delivered by the dealer to such purchaser until after the thirtieth day of April in the year in which application is made for registration, and that it was sold by such dealer as a used or second-hand motor vehicle, but that it had been in the possession of such dealer, as a part of his stock, at all times since the thirty-first day of December, immediately preceding.

3. Or, an affidavit of the applicant that such motor vehicle was not brought into this state until after the thirtieth day of April in the year in which application is made for registration.

En. Sec. 4, Ch. 123, L. 1927.

1759, Subd. 4. Relating to registration of motor vehicles on sale.

Rep. Sec. 22, Ch. 113, L. 1925.

1760. Registration fees. 1. Registration fee shall be paid to the registrar of motor vehicles upon registration or reregistration of dealers and motor vehicles in accordance with this act, as follows:

Dealers in motor vehicles other than motorcycles, seventy-five dollars.

Dealers in motorcycles, twenty-two dollars and fifty cents.

Dealers in automobile accessories where volume exceeds \$200 per year, ten dollars.

Motor vehicles, other than motor trucks, having a rated engine capacity not exceeding twenty-three horse-power (according to S. A. E. formula), seven dollars and fifty cents.

Motor vehicles, other than motor trucks, having a rated engine capacity exceeding twenty-three horse-power, and not more than thirty-seven horse-power (according to S. A. E. formula), fifteen dollars.

Motor vehicles, other than motor trucks, having a rated engine capacity exceeding thirty-seven horse-power (according to S. A. E. formula), twenty-two dollars and fifty cents.

Trucks not over one-half ton capacity \$7.50.

Electrically driven passenger vehicles, fifteen dollars.

Trucks not over one ton capacity, ten dollars.

Trucks over one and not over two tons capacity, twenty-two dollars and fifty cents.

Trucks over two and not over three tons capacity, thirty-seven dollars and fifty cents.

Trucks over three and not over five tons capacity, sixty dollars.

Trucks over five tons capacity, two hundred dollars.

All rates to be twenty-five per cent higher for motor vehicles when not equipped with pneumatic tires.

Bicycle with motor attachment, one dollar and fifty cents.

The registrar of motor vehicles shall first deduct from all fees paid under the provisions of this act, the actual cost of making and mailing all licenses, certificates, license plates, and identification marks, and shall transmit the remainder of the fees so paid to the county from which the registration fee came, to be used by said county for the construction, repair and maintenance of all public highways within said county, including city streets forming component parts of arterial highways within the corporate limits of cities within the boundaries of said county.

2. If any dealer or motor vehicle is originally registered after July 31st in any year, the registration fee for the balance of such year shall be one-half of the regular fee above given.

3. A dealer who shall maintain more than one place of business or who shall maintain any branch establishment or establishments, must register and pay a registration fee for each such place of business or establishment.

4. A registered dealer who may sell and dispose of his entire business to any other person may have his certificate of registration transferred to such purchaser, upon filing with the registrar of motor vehicles a statement containing the name of the registered dealer, the number under which such dealer is registered, the name of the purchaser, and the location of the place of business so sold. Upon the filing of such statement, accompanied by a filing fee of one dollar, the registrar of motor vehicles shall note upon the registration record such change of ownership. But no certificate of registration can be so transferred unless the entire business of the dealer holding such certificate of registration be sold and disposed of, and no such certificate of registration can be transferred to any person other than the purchaser of such business.

5. The provisions of this act with respect to payment of registration fees shall not apply or be binding upon motor vehicles owned or controlled by the United States of America, or by any state, city or county; but in all other respects the provisions of this act shall be applicable and binding upon cars so owned.

Amd. Sec. 1, Ch. 107, L. 1923; Amd. Sec. 1, Ch. 88, L. 1927.

The act requiring the registration of motor vehicles and the payment of prescribed fees, is not open to the constitutional objection that it is a revenue measure, but that it may be justified as a reasonable police regulation. *State v. Pepper*, 70 Mont. 596, 226 Pac. 1108.

In passing upon the contention, unsupported by evidence, that the license fee exacted by this section, as amended, is in excess of the reasonable expense of regulation, the supreme court cannot take judicial notice of the number of vehicles in the state, the amount payable for each one, the cost of administering the law, the net amount paid over to the counties or the cost of enforcing the act. *State v. Pepper*, 70 Mont. 596, 226 Pac. 1108.

Upon inspection of this act alone and in the absence of evidence showing otherwise, that the license fee exacted from the owner of an automobile used for his pleasure and convenience is not so unreasonable as to render its condemnation as a police regulation necessary, the presumption being that it is reasonable. *State v. Pepper*, 70 Mont. 596, 226 Pac. 1108.

The facts that the net automobile license fees paid over to the several counties by the state are converted into the road fund and that any expense of enforcing the act is paid from revenue

derived from general taxation is of no consequence in determining the character of the fees. *State v. Pepper*, 70 Mont. 596, 226 Pac. 1108.

The act of which this section is a part is not invalid so far as it assumes to impose a license fee upon owners of motor vehicles, for failure to indicate in its title a purpose to impose a charge of any kind, the unity of title to an act required by section 23, article V of the constitution, being observed if the various provisions of the act are germane to the general subjects expressed in the title. *State v. Pepper*, 70 Mont. 596, 226 Pac. 1108.

Civil rights and liabilities as affected by failure to comply with regulations as to registration of automobile or licensing of operator, note, 16 A. L. R. 1108; 35 A. L. R. 62; 38 A. L. R. 1038; 43 A. L. R. 1153.

Applicability to public officials or employees of regulations as to registration and licensing of motor vehicles, notes, 19 A. L. R. 463; 23 A. L. R. 418.

Improvement or maintenance tax on automobile or on its use for cost of road or street construction, note, 24 A. L. R. 937.

Validity of statutes imposing license tax on automobiles as affected by constitutional provisions in relation to taxation, note, 5 A. L. R. 759.

1760.1. What fees affected by act. The provisions of this act with respect to the transmitting of registration fees to the county from which the registration fee came, shall apply to all such registration fees undivided and in the custody of the registrar of motor vehicles at the time of the passage and approval of this act.

En. Sec. 2, Ch. 88, L. 1927.

1763.1. Definitions. The words and phrases used in this act shall be construed as follows, unless the context may otherwise require:

(a) The term "motor vehicle" shall include all vehicles impelled by power other than muscular power, except motorcycles operated by policemen or firemen when on official business, also all motor vehicles, including trucks owned and operated by municipalities, or by the state, or by any state institution: Provided, that the same shall be designated by proper signs in which department of said municipality or state, or institution, said trucks or other motor vehicles are employed, traction engines, road rollers, fire wagons, fire engines, police patrol wagons and such vehicles as run only upon rails or tracks.

(b) The term "state" as used in this act, except where otherwise expressly provided, shall also include the territories and the federal districts of the United States.

(c) The term "owner" shall also include any person, firm, association or corporation renting a motor vehicle or having the exclusive use thereof,

under a lease or otherwise, for a period of greater than thirty days, and shall also include a contract vendee.

(d) "Vehicle." Any motor vehicle as herein defined.

(e) "Used vehicle." A motor vehicle which has been sold, bargained, exchanged, given away or title transferred from, the person who first took title to it from the manufacturer or importer, dealer or agent of the manufacturer or importer, and so used as to have become what is commonly known as "second hand" within the ordinary meaning thereof.

(f) "Manufacturer." A person, firm, corporation or association engaged in the manufacture of new motor vehicles, trailers, or semi-trailers, as a regular business.

(g) "Dealer." Any person, firm, corporation or association engaged in the purchase and sale of motor vehicles, trailers or semi-trailers, or in the leasing of the same for a period of thirty or more successive days.

En. Sec. 1, Ch. 113, L. 1925.

1763.2. Certificate of title for motor vehicles. After January one, nineteen hundred twenty-six, no certificate of the registration of any vehicle or number plates therefor, whether original issues, or duplicates, shall be issued or furnished by the registrar of motor vehicles unless the applicant therefor shall at the same time make application for and be granted an official certificate or title of such motor vehicle or shall present satisfactory evidence that such a certificate covering such motor vehicle has been previously issued to the applicant. Said application shall be upon a blank form to be furnished by the registrar of motor vehicles and shall contain a full description of the motor vehicle, which said description shall contain the manufacturer's number, the motor number, and any distinguishing marks, together with a statement of the applicant's title and of any liens or encumbrances upon said motor vehicle, date of acquisition and such other information as the registrar of motor vehicles may require. The secretary of state, if satisfied that the applicant is the owner of such motor vehicle, or otherwise entitled to have the same registered in his name, shall thereupon issue to the applicant an appropriate certificate of title over his signature, authenticated by a seal to be procured and used for such purpose. Said certificates shall be numbered consecutively, beginning with number one, and shall contain such description and other evidence of identification of said motor vehicle as the registrar of motor vehicles may deem proper, together with a statement of any liens or encumbrances which the application may show to be thereon. The charge for each original certificate so issued shall be one dollar, which charge shall be in addition to the charge for the registration of such motor vehicle. Said certificate shall be good for the life of the car so long as the same is owned or held by the original holder of such certificate, and shall not have to be renewed annually, or at any other time except as herein provided. Upon the passage of this act it shall be the duty of the registrar of motor vehicles to cause to be printed copies of this act, and to mail to every person, to whom he has issued a certificate of registration for the year nineteen hundred twenty-five one of such printed copies accompanied by a blank form of application for a certificate of title.

En. Sec. 2, Ch. 113, L. 1925.

1763.3. New certificate required after sale or transfer. In the event of the sale or other transfer after January one, nineteen hundred twenty-six, of the ownership of a motor vehicle for which a certificate of title has been issued as aforesaid, the holder of such certificate shall indorse on the back of same an assignment thereof with warranty of title in form printed thereon with a statement of all liens or encumbrances on said motor vehicle, sworn to before a notary public or some other person authorized by law to take acknowledgments, and deliver the same to the purchaser or transferee at the time of the delivery to him of such motor vehicle. The purchaser or transferee, unless such person is a dealer licensed under section 14 of this act, shall, within fifteen days thereafter, present such certificate, assigned as aforesaid, to the registrar of motor vehicles, accompanied by a fee of one dollar, whereupon a new certificate of title shall be issued to the assignee. Said licensed dealer shall, on selling or otherwise disposing of said motor vehicle, execute and deliver to the purchaser thereof an affidavit of conveyance or assignment in such form as the registrar of motor vehicles shall prescribe, to which shall be attached the assigned certificate of title received by such dealer. Thereupon the purchaser of said motor vehicle shall apply for and receive from the registrar of motor vehicles a certificate of title. Said certificate, when so assigned and returned to the registrar of motor vehicles together with any subsequent assignments or reissues thereof, shall be retained by the registrar of motor vehicles and appropriately filed and indexed, so that at all times it will be possible to trace title to the motor vehicle designated therein; provided, when the ownership of any motor vehicle shall pass by operation of law, the person owning such motor vehicle may upon furnishing satisfactory proof to the registrar of motor vehicles of such ownership procure a title to said motor vehicle regardless of whether a certificate of title has ever been issued.

En. Sec. 3, Ch. 113, L. 1925.

1763.4. Certificate of title required to operate motor vehicles. Any person who shall operate a motor vehicle in this state under a registration number of this state after January one, nineteen hundred and twenty-six, without securing a certificate of title, as herein provided, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than twenty-five dollars, nor more than one thousand dollars, or by imprisonment in the county jail not more than six months or both such fine and imprisonment in the discretion of the court.

En. Sec. 4, Ch. 113, L. 1925.

1763.5. Certificates of registration for motor vehicles. The registrar of motor vehicles shall furnish with each number plate for motorcycles and with each pair of number plates for motor vehicles, a receipt of registration, which shall contain upon the face thereof the following data: The name of the registered owner of the motorcycle or motor vehicle, the owner's postoffice address, the make of the vehicle, the year of model, the model or letter designated by the manufacturer, manufacturer's serial number, if any, the engine number, the registered horse-power, the registration or license number and date of issue of the receipt or registration.

In case of motorcycles, the manufacturer's serial number shall be stated in lieu of the engine number. Such receipt of registration shall contain a blank space for the signature of the registered owner and shall be signed with ink by such owner immediately upon receipt. Such receipt of registration shall contain the registration number denoted on the number plate or plates, in connection with which such receipt of registration is issued. Said receipt of registration shall also contain the engine number of the motor vehicle for which said receipt of registration is issued as denoted by certificate of title issued for said motor vehicle by the registrar of motor vehicles. The receipt of registration referred to herein shall be subject to inspection by any peace officer at any time. It shall be the duty of the registrar of motor vehicles to forward a duplicate of each certificate of registration to the county assessor of the county in which the owner resides, such duplicate to be forwarded at least once each month and such assessor shall file such duplicate certificates in his office alphabetically by name of person to whom issued.

En. Sec. 5, Ch. 113, L. 1925.

1763.6. Old certificates of registration to be returned to registrar of motor vehicles. Upon the transfer of ownership of any motor vehicle or motorcycle, registered under this act, the person in whose name such a motor vehicle or motorcycle is registered shall forthwith forward the receipt of registration to the registrar of motor vehicles with indorsement on the back thereof, or otherwise showing the name and postoffice address of the transferee, and the date of transfer. For failure to comply with this provision within fifteen days after the date of transfer, the transferor, upon conviction, shall be fined not less than five dollars or more than fifty dollars.

En. Sec. 6, Ch. 113, L. 1925.

1763.7. Transfer of ownership file to be kept by registrar of motor vehicles—Transferee of title required to make application for new certificate. Thereupon it shall be the duty of the registrar of motor vehicles to file such receipt of registration in a file to be known as "The transfer of ownership file." Unless the transferee as shown by the indorsement on the back of the receipt of registration, applies by mail, or otherwise, within ten days after the date of transfer of the motor vehicle for certificates of registration and title, the registrar of motor vehicles shall notify by registered mail or otherwise said transferee at once to do so. Unless said transferee then makes application within five days after the receipt of such notice from the registrar of motor vehicles for such certificates, he shall be considered to be driving a motor vehicle without registration, and upon conviction thereof shall be fined not less than five dollars nor more than fifty dollars.

En. Sec. 7, Ch. 113, L. 1925.

1763.8. Registrar of motor vehicles may refuse to issue certificate or revoke same if issued. If the registrar of motor vehicles shall determine at any time that an applicant for a certificate of title of a motor vehicle is not entitled thereto, he may refuse to issue such certificate or to register

such vehicle, and may for a like reason and after notice and hearing revoke registration already acquired on any outstanding certificate of title. Said notice shall be served in person or by registered mail.

En. Sec. 8, Ch. 113, L. 1925.

1763.9. Penalty for false statement in application for certificate or assignment thereof and possession of stolen motor vehicle. Any person who shall knowingly make any false statement of a material fact, either in his application for the certificate of title herein provided for, or in any assignment thereof, or who, with intent to procure or pass title to a motor vehicle which he knows or has reason to believe has been stolen, shall receive or transfer possession of the same from or to another, or who shall have in his possession any motor vehicle which he knows or has reason to believe has been stolen, and who is not an officer of the law engaged at the time in the performance of his duty as such officer, shall be deemed guilty of a felony and upon conviction shall be punished by a fine of not more than five thousand dollars or by imprisonment in any penal institution within this state for not more than ten years, or both, at the discretion of the court.

En. Sec. 9, Ch. 113, L. 1925

1763.10. Certificates for dealers and manufacturers. In the case of dealers in motor vehicles or motorcycles, including manufacturers who sell to others than dealers, all of whom are intended to be covered by this and all other provisions of this section, a separate certificate of title, either of such dealer's immediate vendor, or of the dealer himself, shall be required in the case of each motor vehicle in his possession, and the registrar of motor vehicles shall determine the form in which application for such certificates of title and assignments thereof shall be made; provided, however, that no such certificate shall be required in the case of new motor vehicles sold by manufacturers or dealers as the term "dealers" is defined in section one of this act.

En. Sec. 10, Ch. 113, L. 1925.

1763.11. Original or duplicate certificate of registration to be presented—Fee. Every person applying for a certificate of registration of any motor vehicle for which a license has previously been issued, shall present to the registrar of motor vehicles either the original or a duplicate of such certificate of registration. A charge of twenty-five cents shall be made by the registrar of motor vehicles for all duplicate certificates of title or of registration issued by him.

En. Sec. 11, Ch. 113, L. 1925; Amd. Sec. 1, Ch. 74, L. 1927.

1763.12. Alteration or forgery of certificate of title or assignment thereof and penalty therefor. Any person who shall alter or forge or cause to be altered or forged, any certificate of title issued by the registrar of motor vehicles pursuant to the provisions of this section, or any assignment thereof, or who shall hold or use any such certificate or assignment knowing the same to have been altered or forged, shall be deemed guilty of a felony, upon which conviction thereof shall be liable to pay a fine

of not more than five thousand dollars or to imprisonment in any penal institution within the state for a period of not more than ten years, or both, in the discretion of the court.

En. Sec. 12, Ch. 113, L. 1925.

1763.13. Report of stolen and recovered motor vehicles. It shall be the duty of the sheriff of every county of the state and of the chief of police or commissioner of police of every city to make immediate report to the registrar of motor vehicles of all motor vehicles reported to him as stolen or recovered, upon forms provided for by the registrar of motor vehicles. Failure on the part of any officer shall be deemed to be misfeasance in office and shall constitute grounds for removal. Upon receipt of such information, the registrar of motor vehicles shall file the same in an index to be known as the "Stolen and recovered motor vehicle index." It shall also be the duty of the registrar of motor vehicles to file reports of stolen and recovered motor vehicles reported to him from other states. The registrar of motor vehicles shall prepare once a month a list of all motor vehicles stolen or recovered during the previous month and forward a copy of the same to every sheriff, and all police departments in cities of the first, second and third class. Such list shall also be forwarded to the secretary of state, or other proper official, in each state of the United States. Before issuing a certificate of title, as heretofore provided, the secretary of state shall check the motor and serial number on the motor vehicle to be registered against the "Stolen and recovered vehicle index."

En. Sec. 13, Ch. 113, L. 1925.

1763.14. Licensing of second-hand dealers—Keeping records of vehicles received for sale and penalty. That after the first day of January, nineteen hundred twenty-six, it shall be unlawful for any person to carry on or conduct in this state the business of buying, selling or dealing in used vehicles or parts thereof, unless and until he shall have received a license from the registrar of motor vehicles authorizing the carrying on or conducting of such business. Such license shall be furnished annually by the registrar of motor vehicles and shall run from the first day of January, nineteen hundred twenty-six, and annually thereafter for each year, beginning on the first day of January. The application for said license shall be in such form as may be prescribed by the said registrar of motor vehicles and subject to such rules and regulations with respect thereto as may be so prescribed by him. Such application shall be verified by oath or affirmation and shall contain a full statement of the name or names of the person or persons applying therefor, the name of the firm or copartnership with the names and places of residence of all the members thereof, if such applicant be a firm or copartnership, the name and residence of the principal officers, if the applicant be a body corporate or other artificial body, the name of the state under whose laws the corporation is organized, the location of the place or places at which such business is to be carried on and conducted, and said application shall contain such other relevant information as may be required by the registrar of motor vehicles. It shall be accompanied by a statement of two reputable persons of the community in which the principal place of busi-

ness is to be located, certifying to the good moral character of the person or persons applying for such license. Upon making such application the person applying therefor shall pay to the registrar of motor vehicles in addition to the fees required of dealers under the provisions of section 1760 of the Revised Codes of Montana of 1921 a fee of five dollars. A license certificate shall be issued by the registrar of motor vehicles in accordance with such application when the same shall be regular in form and in compliance with the provisions of this section, and such license, when so issued, shall entitle the licensee to carry on and conduct the business of buying and selling and dealing in used vehicles and parts thereof, for a period of one year from the first day of January of the current year. The registrar of motor vehicles shall have the power to make suitable rules and regulations for the issuance of such licenses to expire upon the first day of January of the succeeding year, when the application therefor shall be made during the current year, and upon payment of a license fee of three dollars provided application is made after July first of any year. Any person conducting the business of buying, selling or dealing in used vehicles and having received a license therefor, shall, before removing any one or more of his places of business, or shall, before opening any additional places of business, apply to the registrar of motor vehicles for, and obtain, a supplemental license, for which no fee shall be charged. Every such licensee shall keep a book or record in such form as may be prescribed or approved by the registrar of motor vehicles, in which he shall keep a record of the purchase, sale or exchange or receipt for the purpose of sale, of any second-hand vehicle or parts thereof, a description of such vehicles or parts, together with the name and address of the seller, of the purchaser, and of the alleged owner or other person from whom such vehicle or parts were purchased or received, or to whom they were sold or delivered, as the case may be. Such description in the case of motor vehicles shall also include the engine number, if any, the maker's number, if any, chassis number, if any, and such other numbers or identification marks as may be thereon, and shall also include a statement that a number has been obliterated, defaced or changed, if such is the fact. In the case of a trailer or semi-trailer, the record shall include the manufacturer's number and such other numbers or identification marks as may be thereon. He shall also have in his possession a duly assigned certificate of title from the owner of said motor vehicle in accordance with the provisions of another section of this act, from the time when the motor vehicle is delivered to him until it has been disposed of by him. Any person guilty of violating any of the provisions of this section shall be deemed guilty of a felony and punished by a fine of not more than one thousand dollars or by imprisonment in any penal institution within this state for not more than three years or both at the discretion of the court.

En. Sec. 14, Ch. 113, L. 1925.

1763.15. Penalty for sale of vehicle with engine number altered or changed—Application for special number. Any person or persons, firm or corporation, who, thirty days after the taking effect of this article, shall sell or offer for sale in this state a vehicle, the original engine num-

ber of which has been destroyed, removed, altered, covered or defaced, with the exception of electrically propelled vehicles, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than two hundred dollars, nor more than five hundred dollars, and by imprisonment in the county jail for a term of not less than thirty days nor more than one hundred and eighty days, and upon a second or subsequent conviction under this section, the punishment shall be imprisonment in the state prison for a term of not less than one year nor more than five years: Provided, however, that any person or persons, firm or corporation, being the owner or custodian of or having possession of a vehicle at the time of the taking effect of this article, the original engine number of which has been previously destroyed, removed, altered or defaced, shall before the expiration of thirty days after the taking effect of this article apply to the registrar of motor vehicles on a blank to be prepared and furnished by the registrar of motor vehicles upon request, for permission to make or stamp, or cause to be made or stamped on the engine of such vehicle, a special engine number. The application for permission to make or stamp a special engine number on the engine of a vehicle under the provisions of this article shall contain a description of such vehicle including the make, style and year of model of the same, as complete a description of the original engine number, if any part of the same remain, as is possible to give, any distinguishing marks that may be on the engine or body of such vehicle and the name and postoffice address of the applicant, the date on which he purchased or procured possession of the same, the name and postoffice address of the person or persons from whom he purchased such vehicle, and such information as the registrar of motor vehicles may require, all of which description and facts shall be sworn to by said applicant before a notary public or other person authorized in this state to administer oaths or take acknowledgments. Upon receipt of such application, together with a fee of one dollar, the registrar of motor vehicles shall issue to said applicant written permission to make or stamp on the engine of such vehicle a special engine number to be designated by the registrar of motor vehicles, and when such special engine number so designated has been stamped or otherwise placed on the engine of such motor vehicle it shall become and thereafter be the lawful engine number of such vehicle, for the purpose of identification and registration and for all other purposes under the provisions of this article, and the owner thereof may sell or transfer the same under said special engine number so designated by the registrar of motor vehicles; and any person or persons who shall destroy, remove, cover, alter or deface any special engine number so designated by the registrar of motor vehicles shall be deemed guilty of a felony and upon conviction thereof shall be punished by imprisonment in the state prison for a term of not less than two years nor more than ten years. In designating special engine numbers for motor vehicles under the provisions of this article the registrar of motor vehicles shall designate and number the same consecutively, beginning with the number (1), preceded by the letters S. N. and followed by the letters for each and every make of motor vehicle for which a special application engine number shall be made, and in the order of the filing of application therefor: Provided, that from

and after the taking effect of this article, the registrar of motor vehicles shall not register any vehicle without an engine number or issue a license for the operation of the same except as specifically provided for herein; and further, before issuing said license the registrar of motor vehicles shall require of the applicant a statement that the special number assigned to be placed on the particular vehicle in question has been put on in a workmanlike manner, and this statement shall be certified to by the sheriff, chief of police, or other convenient peace officer, that he has inspected said vehicle and found said number to be on said motor vehicle as required by the registrar of motor vehicles. Nothing herein shall be construed to prevent any manufacturer or importer, or their agents other than dealers, from doing his own numbering on motor vehicles or parts removed or changed and replacing the numbered parts.

En. Sec. 15, Ch. 113, L. 1925.

1763.16. Dealer to furnish purchaser with bill of sale. Every dealer upon the sale by him to any person or persons of a new motor vehicle shall furnish to such purchaser or purchasers a bill of sale or other suitable evidence of such sale upon a blank form to be furnished by the registrar of motor vehicles, which shall contain the name of such dealer, the name of the purchaser, the date of the sale, a full description of the motor vehicle, which said description shall contain the manufacturer's number, the motor number and any distinguishing marks, together with any other date which the registrar of motor vehicles may require or deem advisable.

En. Sec. 16, Ch. 113, L. 1925.

1763.17. Appointment of deputy—Authority of peace officers. The registrar of motor vehicles is hereby given power to appoint and pay from the fund hereinafter designated as the "auto theft fund" one deputy in addition to the present peace officers of the law to carry out the provisions of this act and he, together with the present peace officers, are hereby given police power and authority throughout the state to arrest any person in the act of violating or attempting to violate in his presence any of the provisions of this act and are hereby made peace officers of this state for that purpose. Any peace officer of this state shall have the authority and is hereby required to use reasonable diligence in ascertaining whether the owners and operators of motor vehicles are complying with the provisions of this act.

En. Sec. 17, Ch. 113, L. 1925.

1763.18. Auto-theft fund, how used. All moneys received by the registrar of motor vehicles under the provisions of this act shall be set aside and shall be known as the "auto-theft fund" and shall be used first to meet the necessary additional expenses of the office of the registrar of motor vehicles incurred by the performance of duties. If at the end of any fiscal year there is a balance in said fund, said balance shall be distributed as follows: To the road fund of the counties from which the same originated. All expenses which may be incurred by the secretary of state in printing this act and in the preparation and printing of the prescribed forms, together with the cost of postage and mailing and the

necessary clerical assistance, shall be paid in the first instance out of the motor vehicle administrative fund accruing from motor vehicle license fees and as soon as sufficient funds are available from the fees and collections provided for in this act, the said motor vehicle administrative fund shall be reimbursed for the amount so paid.

En. Sec. 18, Ch. 113, L. 1925.

1763.19. Records shall be open for public inspection. All records provided for in the foregoing shall be open to inspection during all reasonable business hours, and the registrar of motor vehicles shall furnish the information from said records upon payment by the applicant of the cost of transcribing the information asked for.

En. Sec. 19, Ch. 113, L. 1925.

1763.20. False statements shall constitute perjury. Any person who shall make any false affidavit, or shall knowingly swear or affirm falsely, to any matter or thing required by the terms of this act to be sworn or affirmed to, shall be guilty of perjury, and upon conviction, shall be punishable by a fine and imprisonment as other persons committing perjury are punishable.

En. Sec. 20, Ch. 113, L. 1925.

1763.21. Any part declared unconstitutional shall not render remainder of act invalid. If any provision of this act shall be held by any court of competent jurisdiction to be unconstitutional, such judgment shall not affect any other section or provision of this act.

En. Sec. 21, Ch. 113, L. 1925.

CHAPTER 137.

PRIVATE ROADS—HOW ESTABLISHED.

1765. How established.

Under this section and section 9955, the appointment of commissioners to determine the damages occasioned by the establishment of a private road, is not

necessary. *Komposh v. Powers et al.*, 75 Mont. 493, 244 Pac. 298.

For text treatment of this subject see vol. 13 Cal. Jur. 320.

CHAPTER 138.

FERRIES.

1766. Ferries between counties.

Sections 1766 to 1782 were cited in *State ex rel. Rankin v. Martin*, 68 Mont. 392, 397, 398, 399, 219 Pac. 632.

For text treatment of this subject see vol. 12 Cal. Jur. 503.

1770. Duty of board of commissioners.

The state is not required to bring action on the bond of a ferryman whom it charges with failing to operate his ferry as required by law, but may bring an action in the nature of quo warranto

to have the franchise declared forfeited, irrespective of the bond. *State ex rel. Rankin v. Martin*, 68 Mont. 392, 219 Pac. 632.

CHAPTER 139.

STATE HIGHWAY COMMISSION.

1783. State highway commission—Creation, salary and bond—Terms.

There is hereby created a commission to be known as the state highway commission to consist of three members to be appointed by the governor and each of said members shall be a citizen of the United States and of the state of Montana.

Each commissioner shall hold office for the term of four years and until his successor is appointed and qualified and shall receive as compensation to be paid out of the highway fund the sum of ten dollars (\$10) per diem for each day actually engaged in the duties of his office, including his time of travel between his home and place of employment of such duties, together with his traveling expenses while away from his home in the performance of the duties of his office. Provided, however, that said commissioners herein provided for, shall not be appointed until such time as a vacancy exists in said commission as constituted at this time.

The commission shall choose one of its own number as chairman and shall have power to appoint an engineer and other employees of the commission. The office of said commission shall be maintained in the state capitol building.

Each commissioner shall give bond conditioned for the faithful performance of his duties in the sum of ten thousand dollars (\$10,000).

Amd. Sec. 1, Ch. 129, L. 1925.

Under section 7472, a bond executed by a contractor under a construction contract entered into by the state highway commission in accordance with sec-

tions 1783-1802 created no obligation in favor of a materialman which it could enforce in its own name. *Federal Surety Co. v. Minneapolis Steel & Mach. Co.*, 17 Fed. (2d) 242.

1790. Contracts, how awarded.

Where the assignment of funds to become due one who contracted with the state highway commission to construct a road expressly referred to the contract, the assignee bank was chargeable with knowledge of the contents of the contract; the assignee was further chargeable with notice of the fact that before

entering upon the work the contractor was required to furnish the bond provided for by this section, and of the rights of the surety and the liabilities of the commission. *Lanstrum et al. v. Zumwalt et al.*, 73 Mont. 502, 237 Pac. 205.

CHAPTER 141.

STATE BOARD OF LAND COMMISSIONERS—DEFINITION OF STATE LANDS.

1805. Definitions.**Rep. Sec. 123, Ch. 60, L. 1927.**

For text treatment of this subject see vol. 21 Cal. Jur. 664.

(a) Department of State Lands—State Board of Land Commissioners.

1805.1. Department of state lands and investments created. Purpose. There is hereby created a department of the government of the state of Montana to be known and designated as the "department of state lands and investments." The general purpose of this department shall

be to administer the federal land grants made to the state of Montana, and the other state lands, and the funds arising from these lands, and the funds coming under its control through the provisions of article XXI of the state constitution, or otherwise, as hereinafter more specifically provided.

En. Sec. 1, Ch. 60, L. 1927.

NOTE.—The following act is a codification of the laws relating to the state land department. The repealing clause of the act showing the sections of the Revised Codes of 1921 superseded by it will be found at section 1805.123 of this supplement.

1805.2. Definitions. In this act, the term “department” shall mean the department of state lands and investments; the term “board” shall mean the state board of land commissioners; the term “commissioner” shall mean the commissioner of state lands and investments; the term “assistant commissioner” shall mean the assistant commissioner of state lands and investments; the term “state land” or “lands” shall mean and include all lands that have heretofore been granted and that hereafter may be granted to the state by the United States for educational purposes or for any other purpose, either directly or through exchange for other lands; all lands that have become the property of the state through deed or devise from any person; all lands to which the state has become the owner through a mortgage to the state, either by foreclosure or otherwise; and all lands that have become the property of the state through the operation of law, except, however, such of these lands as the state has sold and conveyed through the issuance of patent; and except also lands that are used as building sites, campus grounds, or for experimental purposes by any of the state institutions, and has become the property of such institution; the term “mortgage land” or “mortgage lands” shall mean land or lands to which the state has become the owner through a mortgage thereon either by foreclosure or otherwise.

En. Sec. 2, Ch. 60, L. 1927.

1805.3. Powers and duties of the board. The state board of land commissioners, consisting of the governor, superintendent of public instruction, secretary of state and attorney general, as provided by the constitution, shall be the governing board of the department of state lands and investments; it shall have and exercise general authority, direction and control over the care, management and disposition of all state lands and the funds arising from the leasing, use, sale and disposition of such lands or otherwise coming under its administration. In the exercise of these powers, the guiding rule and principle shall be that these lands and funds are held in trust for the support of education, and for the attainment of other worthy objects helpful to the well-being of the people of this state; and that it is the duty of the board so to administer this trust as to secure the largest measure of legitimate and reasonable advantage to the state. The enumeration in this act of specific powers conferred upon the board shall not be so construed as to deprive the board of other powers not enumerated but inherent in the general and discretionary powers conferred by the constitution, and necessary for the proper discharge of its duties; but there can be no such implied powers inconsistent with any part of the constitution, nor shall any inherent powers be as-

sumed to exist which would be inconsistent with any statutory provision or with the general rule and principle herein stated.

En. Sec. 3, Ch. 60, L. 1927.

1805.4. Meetings of the board—Preservation of records. The board shall hold regular meetings on the second Wednesday of each month, and may hold special meetings whenever deemed necessary, upon call of the president or a majority of the members. Three members of the board shall constitute a quorum for the transaction of business. The governor shall be the president of the board; in his absence and the absence of the lieutenant-governor, the superintendent of public instruction shall preside. The board may adopt whatever rules and regulations it deems proper for the conduct of its meetings. It shall cause complete minutes to be kept of its proceedings in a suitable book provided for that purpose and all important documents, maps, plats and papers to be properly cared for and preserved.

En. Sec. 4, Ch. 60, L. 1927.

(b) The Commissioner—The State Forester—Their Powers and Duties.

1805.5. Appointment of commissioner—Manner of qualifying. The governor, by and with the consent of the senate, shall appoint a commissioner of state lands and investments, who shall be the chief administrative and executive officer under the board in all matters except those pertaining to the state forests, who shall not be a member of the state board of land commissioners and whose term of office shall be four years, or until his successor has been appointed and qualified. Before assuming the duties of his office, the commissioner shall take and subscribe to the constitutional oath of office and shall provide a surety company bond in the amount of twenty-five thousand dollars (\$25,000) conditioned for the faithful discharge of his duties, which bond shall be subject to the approval of the board and filed with the secretary of state; the premium thereon shall be paid by the state as the bonds of other state officials.

En. Sec. 5, Ch. 60, L. 1927.

1805.6. State forester. The state forester shall be the chief administrative and executive officer under the board in all matters pertaining to the state forests. His powers, duties, qualifications, compensation and entire status shall be as now provided by law.

En. Sec. 6, Ch. 60, L. 1927.

1805.7. Appointive powers of commissioner—Management of office. The commissioner shall have the authority to appoint one assistant commissioner, one cashier, one secretary, one chief field agent, and such number of assistant field agents, clerks, stenographers and other employees as he may deem necessary for the proper performance of the work of his office, subject, however, to the approval of the state board of examiners as to the number of clerks and stenographers and employees. He shall also have authority to prescribe rules and regulations, not inconsistent with law, for the organization and management of his office, for the con-

duct of the office and field forces, for the distribution and performance of its business, and the custody, use and preservation of its records, papers, books, documents, equipment and other property.

En. Sec. 7, Ch. 60, L. 1927.

1805.8. Powers and duties of commissioner—Ex-officio secretary of the board. He shall be ex officio the secretary of the state board of land commissioners, keep the minutes of its proceedings, be the custodian of its seal and records and carry out its orders. Under the direction of the board and all legal provisions governing such business, and through the proper officers, agencies and persons herein provided, he shall have charge of the selecting, exchange, classification, appraisal, leasing, management, sale and other disposition of the state lands and the investment of the funds arising therefrom or otherwise coming under the administration of the department. He shall perform such other duties as the board may direct, the purpose of the department seems to demand, or the statutes require. He shall collect and receive all moneys payable to the state through his office as fees, rentals, royalties, interest, penalties, payments on mortgages or lands purchased from the state or derived from any other source, and shall issue triplicate receipts for each and all of such payments, one of which shall be mailed or delivered to the payor, and one retained in his office. On or before the fifteenth day of each month and also on or before the thirtieth day of each month he shall report and pay over to the state treasurer all moneys received since the last previous settlement for which final receipts have been issued; at the same time he shall turn over to the state auditor all triplicates of the receipts issued during that period.

En. Sec. 8, Ch. 60, L. 1927.

1805.9. Reports by state treasurer. On or before the tenth day of each calendar month, the state treasurer shall report to the commissioner the amount of money received by him during the preceding month from each source, except from the commissioner, for each income fund and each permanent fund arising from a federal land grant or otherwise under the control of the state board of land commissioners; also the amount paid out from each such income fund or permanent fund during such month and the object of such payment; and also the balance uninvested in each such fund; these reports shall be on such forms and contain such additional information as the commissioner shall prescribe and the board approve.

En. Sec. 9, Ch. 60, L. 1927.

1805.10. Biennial report by commissioner. On or before the first day of December of each even-numbered year the commissioner shall prepare and publish a report giving summaries of all important transactions of his office during the two preceding fiscal years terminating on June 30th of that year, and also showing fully the amount of all assets belonging to each of the permanent funds and income funds under the administration of the department as of that date, together with such other information relating to the affairs of the department as the board or the commis-

sioner may deem worthy of publication. He shall also from time to time furnish such information and make such additional reports as the good of the department may seem to demand or the board require.

En. Sec. 10, Ch. 60, L. 1927.

1805.11. Duties of assistant commissioner. The assistant commissioner of state lands and investments shall perform such work, services and duties as the commissioner may from time to time designate; during the absence or disability of the commissioner he shall perform all the duties of the commissioner.

En. Sec. 11, Ch. 60, L. 1927.

1805.12. Duties of chief field agent. Under the direction of the commissioner, the chief field agent shall have charge of all the field work of the department, except the work falling under the office of the state forester, and shall perform such additional services and duties as the commissioner may from time to time designate.

En. Sec. 12, Ch. 60, L. 1927.

1805.13. Oath of office and bonds. The assistant commissioner, the chief field agent, and the cashier shall each take and subscribe to the constitutional oath of office before entering upon his duties and shall provide a surety company bond conditioned for the faithful discharge of his duties, which bonds shall be in such amount as the state board of land commissioners may designate, the bonds to be approved by the state board of land commissioners and filed with the secretary of state. The premium on such bonds shall be paid by the state as other bonds of state officials. The board may require any other officer or employee of the department to furnish a surety company bond in such amount as it may designate.

En. Sec. 13, Ch. 60, L. 1927.

1805.14. Salaries and compensation—Persons now appointed to hold office during terms for which appointed—Appropriations. The salary of the commissioner shall be thirty-six hundred dollars (\$3,600) per annum; the salary of the assistant commissioner shall be twenty-four hundred dollars (\$2,400) per annum; and the salary of the chief field agent shall be three thousand two hundred and fifty dollars (\$3,250) per annum. The salaries of each one of these three officials and of all clerks and stenographers and field men and other employees of the department shall be payable monthly from the state general fund. In addition to these salaries, each one of the aforesaid officers shall be paid actual and necessary expenses while engaged in the performance of his official duties outside the state capital.

The persons now appointed, qualified and acting as register of state lands, deputy register of state lands, and as state land agent shall respectively serve as commissioner of state lands and investments, as assistant commissioner of state lands and investments, and as chief field agent during the terms for which they have been appointed as register of state lands, as deputy register of state lands, and as state land agent.

All balances of appropriations made for the office of register of state lands and for the office of the state land agent for the fiscal year ending

June 30th, 1927, and all appropriations for these two offices for the two ensuing fiscal years terminating June 30th, 1929, shall be deemed appropriations for the office of the commissioner of state lands and the chief field agent and shall be available for the use of such offices and officers.

The salaries and compensations of all the other officers, agents and employees of the department shall be fixed by the state board of examiners and paid from the state general fund, but if such board fails to fix the same, then the commissioner may determine the amount of their compensation. No employee of the department of state lands and investments who is paid a fixed compensation shall receive pay for any extra services rendered by him unless expressly authorized by law.

En. Sec. 14, Ch. 60, L. 1927.

(c) Selection—Classification—Appraisal and Exchange of Lands.

1805.15. Selection. Under the general direction of the state board of land commissioners and as rapidly as the appropriations for the work will permit, the commissioner shall with all reasonable diligence cause to be selected and located all lands, except timber lands, which have heretofore been granted or which may hereafter be granted to this state by the United States for any purpose whatsoever, and not located by the grant itself. He shall also with all due diligence cause to be selected and located lands in lieu of all those lands in sections sixteen and thirty-six and in the other federal land grants which for any reason whatsoever have been lost to the state; he shall cause to be performed without any unnecessary delay on his part all work necessary for the completion of these selections so that the state may actually receive all the lands under its various grants. All selections and lieu selections shall as far as possible be in legal subdivisions. In the selection and location of these lands, careful attention shall be given to the water available and which may be appropriated for such lands for domestic use, livestock and irrigation.

En. Sec. 15, Ch. 60, L. 1927.

1805.16. Classification. The lands of the state of Montana shall be classified according to the provisions of the constitution as follows:

Class 1. Grazing lands, being all those lands which are valuable only for grazing purposes.

Class 2. Timber lands, being all those lands which are principally valuable for the timber that is on them.

Class 3. Agricultural lands.

Class 4. Lands within the limits of any town or city or within three miles of such limits.

The third class, agricultural lands, shall be subdivided into two classes as follows:

(a) Irrigable lands.

(b) Nonirrigable lands.

The fourth class shall be subdivided as follows:

(a) Lands within the limits of any town or city.

(b) Lands not within such limits but within three miles thereof.

The classification shall be so made as to place each forty-acre tract or lot in the class to which it properly belongs.

Whenever lands formerly nonirrigable have become irrigable, and whenever new towns or cities are located and platted, and in all other cases when the board deems it necessary, the lands affected shall be reclassified so that no state land will be sold under a different classification from that to which it actually belongs.

All field-books, plats, maps and records of the department shall show the class to which each tract therein belongs, and they shall also show whether it belongs to the public schools of the state or to what state institutions or other entity it belongs according to the grant or instrument by which title to such land has passed to the state of Montana; they shall also show whether or not the coal or other minerals in the land are reserved by the United States, and shall contain such further information as the commissioner may deem necessary.

En. Sec. 16, Ch. 60, L. 1927.

1805.17. Appraisal. All lands of the state shall be appraised at their true and full value as nearly as the same can be ascertained. In determining and fixing such value temporary inflations or depressions in land prices or fluctuations in the economic and financial conditions of the state shall not be taken into account. The average annual value of the crop or crops that the land is capable of producing through a long series of years shall be the main basis for such valuation; but consideration shall also be given to every other known element that has a permanent bearing on the value.

In all appraisals hereafter made there shall be one and only one kind of value placed on each tract of land at the same time, and this value shall be used as the basis both for the rental and the sale of such land, subject to all constitutional limitations.

The completed appraisal of state lands for any one county shall show the average appraised value of each class of land in such county, and shall contain such additional information as the board may from time to time direct.

No re-appraisal of state lands, except of town lots, shall hereafter be made before such average appraised values in the county to be appraised have been available and considered by the board and the necessity for such re-appraisal determined by it, provided, however, that the board shall have the power to correct errors and adjust inequalities in appraisements when it has been shown to the satisfaction of the board that such errors or inequalities actually exist; and provided, further, that the board may cause mortgaged land to be re-appraised without re-appraising other state lands in the county or counties in which they are located. The board itself shall have the power to raise or lower the appraised value of any class of state land in any county on a percentage basis, uniform for the entire county, whenever it is deemed necessary to make such change in order to make the appraisal value represent the true and full value.

En. Sec. 17, Ch. 60, L. 1927.

1805.18. Board to prescribe further rules for appraisal. The board shall prescribe such further rules and regulations for the appraisal of

state lands as it may deem necessary, not inconsistent with the provisions of this act or the state constitution.

En. Sec. 18, Ch. 60, L. 1927.

1805.19. Exchange of state lands. The state board of land commissioners of the state of Montana is hereby authorized and empowered to enter into contracts or agreements with the United States, or any department thereof having jurisdiction, for the waiving and relinquishment to the United States of any and all rights of the state of Montana in and to sections 16 and 36 of any township and to any other sections of state lands when such sections are situated within or adjoining a federal forest reserve, or within or adjoining other federal land reservations, provided that the state of Montana shall in lieu of the rights so waived and relinquished receive from the United States other lands of an equal area and not inferior in value. The lands so obtained by the state of Montana from the federal government in exchange for lands to which the state has waived and relinquished its rights shall preferably be forest lands, it being the main purpose of these provisions to enable both the United States and the state of Montana to consolidate its forest holdings; but if desirable forest land cannot be obtained for such state lands, then other lands may be selected.

All contracts and agreements heretofore entered into between the state board of land commissioners and the United States, or any department thereof, waiving and relinquishing the rights of the state of Montana to sections 16 and 36 in any township in this state, and the selection of lands in lieu of those so relinquished by the state are hereby ratified, confirmed and validated.

En. Sec. 19, Ch. 60, L. 1927.

(d) Leasing of Agricultural Lands—Grazing Lands and Town, City and Other Lots.

1805.20. Leasing of agricultural and grazing lands and town and city lots. Under the general direction and control of the board, the commissioners shall lease all agricultural and grazing lands and all town and city lots open to leasing upon proper application and the payment of rental as hereinafter more specifically provided. In all cases where there is only one qualified person offering to lease any one tract of land, the lease shall be issued at the minimum rental as determined under the provisions of this act, but if there are two or more persons desiring to lease the same tract, then the lease shall be issued to the highest bidder, subject, however, to the preference right of a former lessee as provided in this act. All agricultural, grazing and town lot leases shall be subject to the condition that the board may in its discretion, offer said land for sale at any of the regular public sales of state lands held in the county where the land is situated, upon the same terms, and in the same manner as land not under lease.

En. Sec. 20, Ch. 60, L. 1927.

1805.21. Renewal of leases—Cancellation before expiration. A lessee who has paid all rentals due from him to the state and not violated the terms of his lease shall be entitled to have his lease renewed at any time within thirty (30) days prior to its expiration for an additional period of not exceeding five (5) years.

En. Sec. 21, Ch. 60, L. 1927.

1805.22. Arbitrators to fix value of improvements—Appeal. If the owner of any improvements on state lands desires to sell such improvements to the new lessee and they are unable to agree on the value thereof, such value shall be ascertained and fixed by three (3) arbitrators, one of which shall be appointed by the owner of the improvements, one by the new lessee and the third by the two (2) arbitrators so appointed. The reasonable compensation that such arbitrators may charge shall be paid in equal shares by the owner of the improvements and the new lessee. The value of such improvements so ascertained and fixed shall be binding on both parties; provided, however, that if either party is dissatisfied with the valuation so fixed, he may within ten (10) days appeal from their decision to the commissioner who shall thereupon cause the chief field agent or assistant field agent to examine such improvements and whose decision shall be final. The commissioner shall charge and collect the actual cost of such re-examination to the owner and the new lessee in such proportion as in his judgment justice may demand. The value of such improvements shall be ascertained and fixed as hereinafter and in this act provided.

En. Sec. 22, Ch. 60, L. 1927.

1805.23. Who may lease, how much, and for what length of time. No person shall be qualified to lease state lands, except one who is the head of a family, unless he or she has attained the age of twenty-one (21) years; no person or company shall be entitled to hold under lease more than one (1) section of land at any one time, and no lease to agricultural or grazing lands or town or city lots shall be for a longer period of time than five (5) years; provided, however, that any qualified lessee may lease and hold any quantity of lands acquired by the state through the foreclosure of mortgages or acquired otherwise in connection with a mortgage to the state.

En. Sec. 23, Ch. 60, L. 1927.

1805.24. Lease expiration dates. All leases for agricultural lands, grazing lands and town and city lots hereafter issued no matter on what date issued, shall expire on February 28 within five (5) years from the date on which the lease becomes effective.

En. Sec. 24, Ch. 60, L. 1927.

1805.25. Rental, how determined. The minimum annual rental for agricultural purposes shall be 5 per centum (5%) of the appraised valuation of such lands but in no case less than fifty cents (50c) per acre. The maximum annual grazing rental for state land shall not exceed one hundred dollars (\$100) per section, except where the leasing price is increased

above this sum by competitive bidding. For the purpose of determining the rental price of grazing lands they shall be classified as follows:

Class 1. Extra good grazing land seventy dollars (\$70) to one hundred dollars (\$100).

Class 2. Good grazing land, well sodded with grass sixty dollars (\$60).

Class 3. Fair grazing land, with medium grass fifty dollars (\$50).

Class 4. Poor grazing land, thinly grassed forty dollars (\$40).

Provided further that until the lands in any county have been appraised under the provisions of this act, the minimum annual rentals for grazing lands in such county shall remain six and one-fourth per centum ($6\frac{1}{4}\%$) of the so-called grazing valuation thereof according to the long-established usage of the state land office.

Rentals for fractional years, terminating on February 28 next following the date of issue, on agricultural and grazing lands shall be computed and collected as follows:

Leases beginning in:	Agricultural rental Percentage of full year's rental	Grazing rental, Percentage of full year's rental
March.....	100%	100%
April.....	100%	100%
May.....	90%	90%
June.....	80%	80%
July.....	70%	70%
August.....	50%	50%
September.....	50%	of grazing rental for both agricultural and grazing leases.
October.....	40%	of grazing rental for both agricultural and grazing leases.
November.....	30%	of grazing rental for both agricultural and grazing leases.
December.....	20%	of grazing rental for both agricultural and grazing leases.
January.....	10%	of grazing rental for both agricultural and grazing leases.
February.....	5%	of grazing rental for both agricultural and grazing leases.

Agricultural rentals shall apply and be charged and collected when the land is leased for or used for the raising of grain of any description, potatoes, beets or other cultivated crops, or for raising and harvesting alfalfa, clover, timothy or other grasses, or for other crops gathered or harvested from the land except that the grazing rates only shall be charged for summer fallowed land. Grazing rentals shall apply when the lands are used exclusively for pasture or grazing.

The minimum annual rental for town, city and other lots shall be five per centum (5%) of the appraised value thereof, calculated at the same rate per month for all seasons of the year. The appraisal of mortgage lands for purposes of fixing grazing rates shall not constitute an appraisal for purposes of sale.

En. Sec. 25, Ch. 60, L. 1927.

1805.26. Rental, when due. The rental for the first year of the lease and the fee of two dollars and fifty cents (\$2.50) for issuing the lease shall be paid at or before the time of the execution of the lease; provided, however, that in the case of all leases which take effect on and after October 1 and before the expiration of the coming February, both the rental for the fractional year and for the next full year beginning March 1, shall be paid and collected at the time of issuing the lease. The rental for each succeeding year on leases hereafter issued shall become due and payable to the commissioner of state lands and investments on December 15 next preceding the rental year to which the rental applies and if not paid on or before February 1 next following, this nonpayment shall have the effect of canceling the lease from and after February 28 of that year. The commissioner shall notify the lessee by letter addressed to the post-office address given in the lease of such cancellation, and the land shall then be open for lease to other applicants.

En. Sec. 26, Ch. 60, L. 1927.

1805.27. Land to be leased in compact bodies. All lands are to be leased in as compact bodies as possible and care shall be taken not to separate parts of any section from the section lines or public highways or from any available water supply, or in such form as to make it more difficult to lease the remaining state lands in the section in which they are located. In case there are applications or bids for renting certain land for grazing purposes and also applications or bids for renting the same land for agricultural purposes, an agricultural lease shall be issued; that bid or application shall be accepted which will bring the largest revenue to the state.

En. Sec. 27, Ch. 60, L. 1927.

1805.28. Change in terms of lease. Whenever any land is leased for grazing purposes, and the lessee desires to cultivate any part of the land, he shall before doing any such cultivation, make application to the commissioner stating how much land he desires to cultivate, showing the location in the section of such land, send his lease to the commissioner to have the necessary changes made therein, and shall pay to the commissioner one (1) year's agricultural rental for the land to be cultivated, which agricultural rental shall be additional to the grazing rental for such land, and shall be paid annually when the rentals become due for each remaining year of the lease, whether the lessee continues to cultivate such part or not, it being the intention of this provision to protect the interests of the state and to induce lessees to have the leases originally issued for the usage intended to be made of the land. In case any person shall cultivate lands leased for grazing purposes, without having first secured the right to do so in the manner herein provided, he shall be liable for twice the regular agricultural rental on the land so cultivated in addition to the grazing rental thereof. The provisions of this section shall be incorporated in every lease.

En. Sec. 28, Ch. 60, L. 1927.

1805.29. Form of lease—Bond. The general form of lease to state lands shall be prescribed by the state board of land commissioners and no

changes in the form for such leases shall be made without the approval of the said board. All leases shall be issued in duplicate, one (1) copy shall be mailed to the lessee, and one (1) copy shall be preserved by the commissioner and entered in a suitable book provided for that purpose. Unless the board decides otherwise, these leases shall be issued without bonds; but the board shall have the right to require a bond and to prescribe the form and conditions thereof whenever it deems it necessary.

En. Sec. 29, Ch. 60, L. 1927

1805.30. Share rent. The board may whenever it deems it advisable, and under such regulations as it may prescribe, authorize the leasing of agricultural lands for a share of the crops delivered at the grain elevator or market, which share shall not be less than what is commonly paid by lessees of privately owned lands as share rent in the locality where the state land is situated; and in no case shall such share rental be less than one-fifth ($\frac{1}{5}$) of the entire crop raised, delivered at the elevator.

En. Sec. 30, Ch. 60, L. 1927.

1805.31. Liens on crops and improvements. The state shall have a lien upon all crops growing upon any of its lands, and also upon such crops after they have been separated from the lands for any and all rentals and penalties due or delinquent under the lease on such lands, or becoming due during the calendar year in which such crops are harvested, for any year or part of year that the land has been held or used by the lessee; such lien shall also apply to all buildings, structures, fences and all other improvements, shall be prior and superior to all other liens, excepting threshermen's liens and seed liens as specified in sections 8355 and 8366 of the Revised Codes of Montana, 1921, which shall have priority as specified in chapter 116 of the session laws of 1925, and is hereby expressly reserved. Any person purchasing or otherwise acquiring any of such crops or improvements takes the same subject to such lien. Any agent or representative of the department, or the sheriff of the county in which the land is located, or his deputy, may demand of the lessee, or his agent, payment of the amounts due the state, and if the same are not paid upon such demand, the officer, making such demand, or any person or representative of the department, may seize, sell and dispose of, either at private or public sale, upon giving notice for not less than three (3) days of such sale, sufficient of the said crops or improvements, or of both, to pay the amounts due the state together with costs and expenses of seizure and sale. These provisions relating to liens on crops and improvements shall be embodied in all leases for agricultural and grazing lands and for town, city or other lots.

En. Sec. 31, Ch. 60, L. 1927.

1805.32. Leases may be assigned—Preference—Subleasing—Actual users to be given preference. Leases to state lands may be assigned on blanks provided for that purpose by the commissioner, but no such assignment shall be binding on the state unless the assignment is filed with the commissioner, approved by him and payment made of the assignment fee of one dollar (\$1). Preference shall always be given to the applicant

who wants the land for his own individual use so that the full advantage coming from the leasing and use of such lands may reach those who actually till the soil, and so that they shall not be compelled to pay a higher rental than that due the state. If a lessee subleases state lands on terms less advantageous to the sublessee than the terms given by the state, his lease shall be subject to cancellation by the state board of land commissioners after hearing, duly held on the facts involved.

En. Sec. 32, Ch. 60, L. 1927.

1805.33. Acquisition of water right by lessee. The lessee of state lands may at any time prior to one (1) year before the expiration of his lease make application to the board for permission to secure a water right to the land under his lease. Such application shall be in writing, shall show how much of the land can be irrigated, the permanency of the water supply and the probable cost of placing the land under irrigation. If the proposed plan meets with the approval of the board, permission shall be granted the lessee to secure the desired water right for the land and to place the same under irrigation. If such water right becomes a permanent and valuable improvement, then in case of the sale or lease of the lands to other parties, the former lessee shall be entitled to receive compensation in the amount of the reasonable value thereof, as in the case of other improvements, from the new lessee or the purchaser. These provisions shall not be so construed as to make the state liable to the lessee for the payment of the cost or value of such irrigation improvements.

En. Sec. 33, Ch. 60, L. 1927.

1805.34. Compensation for improvements. A lessee of state lands shall have the right to place a reasonable amount of improvements upon the lands leased by him, which improvements may consist of fences, cultivation and improvement of the land itself, irrigation ditches, houses, sheds, wells and reservoirs, and similar improvements. Whenever another person becomes the lessee of such lands, he shall pay to the former lessee the reasonable value of such improvements at the time the new lessee takes possession thereof. Provided, however, that if any of the improvements consists of breaking (meaning the original plowing of the land), and one (1) year's crops has been raised on the land after the breaking thereof, the compensation for such breaking shall not exceed the sum of two dollars and fifty cents (\$2.50) per acre, and that in case two (2) or more crops have been raised on the land after the breaking thereof, then in such case the breaking shall not be considered as an improvement to the land. In case the former lessee and the new lessee are unable to agree on the reasonable value of such improvements, then such value shall be ascertained and fixed as provided in this act.

In determining the value of these improvements consideration shall be given not only to the original cost but also to the present condition thereof and to their suitability for the uses ordinarily made of the lands on which they are located, and also to the general state of cultivation of the land, its productive capacity as affected by former use and also to its condition with reference to noxious weeds whether it is

infested with such weeds or free from these pests. Consideration shall be given to all actual improvements and to all known effects that the use and occupancy of the land have had upon its productive capacity and desirableness for the new lessee. The former lessee may, however, remove or dispose of the movable improvements on the land to other parties than the lessee; but if he fails to remove such improvements from the land within sixty (60) days from the date of the expiration of his lease, then all of such improvements shall become the property of the state unless the commissioner for good cause shown shall grant additional time for the removal thereof.

Before a lease is issued to the new lessee he shall show that he has paid the former lessee the value of the improvements as agreed upon by them or as fixed and determined under the provisions of section 22 of this act or that he has offered to pay the value of such improvements as so fixed and determined or that the former lessee elects to remove the improvements.

En. Sec. 34, Ch. 60, L. 1927.

1805.35. Preference right of former lessee. The holder of a lease to state lands, who has paid his rentals when due and has not in any way violated the provisions of his lease, shall at the expiration of such lease have the preference right to lease the lands covered by his former lease to the extent that he may take the lease at the highest bid made by any other applicant.

En. Sec. 35, Ch. 60, L. 1927.

1805.36. Cancellation of leases. The board shall have the power and authority in its discretion to cancel a lease for any of the following causes: For fraud or misrepresentation, or for concealment of facts relating to its issue, which if known would have prevented its issue in the form or to the party issued; for using the land for other purposes than those authorized by the lease, and for any other cause which in the judgment of the board makes the cancellation of the lease necessary in order to do justice to all parties concerned and to protect the interests of the state. Such cancellation shall not entitle the lessee to any refundment of rentals paid or exemption from the payment of any rentals, penalties or other compensation due the state.

En. Sec. 36, Ch. 60, L. 1927.

1805.37. Leasing regulations. The state board of land commissioners shall have the power, and it is hereby made its duty, to formulate and prescribe such additional rules and regulations relating to the leasing of state lands, not inconsistent with the provisions of this act, as it may from time to time deem necessary in order that the use and proceeds of these lands may contribute in the highest attainable measure to the purposes for which they have been granted to the state of Montana.

En. Sec. 37, Ch. 60, L. 1927

(e) Coal Mining Leases and Permits.

1805.38. Coal mining leases. The state board of land commissioners is hereby authorized and empowered to lease in such manner as it may deem for the best interests of the state any state lands to which the title has vested in the state and in which the coal or coal rights are not reserved by the United States for exploring for, mining, removing, selling and disposing of the coal therein upon the terms and conditions herein stated, and subject to such rules and regulations as the board may prescribe. This power and authority to lease state lands for coal mining purposes shall extend to and include all lands owned by the state no matter in what manner acquired and shall also extend to and include all those state lands which have been sold but in which the coal rights have been reserved by the state of Montana, whether such lands are under certificate of purchase or patents have been issued; but in such cases and in all cases where the lands are under lease for grazing, agriculture or similar purposes, care shall be taken in issuing the coal mining lease to protect the rights of the purchaser or lessee.

All such coal leases shall be subject to the condition that the coal must be mined, handled and marketed in such manner as to prevent as far as possible all waste of coal and shall also be subject to the condition that the mining operations shall be carried on in such systematic and orderly manner as not to make subsequent mining operations more difficult or expensive. Violations of these conditions shall constitute grounds for the forfeiture of the lease, after hearing had thereon before the state board of land commissioners.

En. Sec. 38, Ch. 60, L. 1927.

1805.39. Not more than one section may be leased to one person—Term—Fee. No person, copartnership, company or corporation shall be entitled to lease more than one (1) section of land for coal mining purposes, and no lease shall be issued for a longer term than five (5) years, but the board may establish such rules and regulations for the renewal of a lease at the expiration of the term as it may deem proper and necessary. The board shall prescribe the form of the lease; the fee for issuing the lease and approving the bond hereinafter provided shall be two dollars and fifty cents (\$2.50) payable to the commissioner.

En. Sec. 39, Ch. 60, L. 1927.

1805.40. Royalty. The compensation of the state under all coal mining leases shall be upon a royalty basis and shall be fixed and determined by the board. The amount of such royalty shall be based upon the kind, grade and character of the coal in each particular mine, upon the size, shape and nature of the coal vein, strata or body, and upon the shipping and marketing facilities for the product. Consideration shall also be given to every other known factor affecting the value of each particular coal mining lease; but in no case shall the royalty for the coal mined be less than twelve and one-half (12½) cents per ton of two thousand (2,000) pounds.

En. Sec. 40, Ch. 60, L. 1927.

1805.41. Application—Deposit. The application for a coal mining lease shall be in writing, shall state the quantity of coal that it is proposed to mine under such lease during the first year thereof and during each subsequent year as nearly as the applicant can estimate such quantity and shall contain such further information as the board may require. If the board grants the application, it shall fix the royalty per ton and shall demand from the applicant a deposit of not less than the amount of the royalty on the estimated average production for one (1) month of the lease and it may at its discretion ask for such larger deposit as it may under the circumstances deem necessary in order to protect the interests of the state; but this deposit shall in no case be less than fifty dollars (\$50).

This deposit shall be credited to the lease and held intact to the end of the first year. If all the royalties for such year have been paid and are equal to or exceed such deposit then the deposit shall be held intact for the credit of the lessee for the subsequent year or years; but if the royalties accrued and paid during the first year or any subsequent year amount to less than the amount of such deposit, then the difference between the amount of the royalties paid and the deposit shall be deducted therefrom and charged as rent or royalty for the lease for that year so that the annual rental will never be less than the amount of the cash deposit determined upon by the board and in no case less than fifty dollars (\$50) per annum. At the beginning of the second year or any subsequent year of the lease, the lessee shall make such additional deposit as will bring the unused portion of his deposit up to the original amount as fixed by the board.

En. Sec. 41, Ch. 60, L. 1927.

1805.42. Bond. The board shall also demand a surety company bond in such form and amount as it may determine conditioned for the payment of all royalties due the state and for the carrying on of the mining operations according to the terms of the lease; but a lessee may in lieu of furnishing a surety company bond increase the cash deposit hereinbefore provided for to such an amount as will in the judgment of the board make the furnishing of a bond unnecessary.

En. Sec. 42, Ch. 60, L. 1927.

1805.43. Improvements of former lessee. Whenever a coal mining lease is applied for on land where mining operations have been carried on by a former lessee and there are surface or underground improvements on the land used at such former operations, disposition shall be made of such improvements satisfactory to the board before a new lease is issued. If the owner of such improvement desires to sell the same to the new lessee, then the new lessee shall pay him the reasonable value thereof as far as they are suitable for the new mining operations. If they fail to agree, on the value of such improvements, then such value shall be ascertained and fixed as provided in section 22 of this act.

Before a new lease is issued, the applicant shall show to the satisfaction of the board that he has paid the owner for the improvements as agreed on between them, or as fixed by the aforesaid officers, or officer,

or that he has tendered payment as so fixed, or that the owner desires to remove his improvements.

En. Sec. 43, Ch. 60, L. 1927.

1805.44. Board may prescribe additional rules and regulations. The board shall have the power and authority to prescribe such additional rules and regulations and to do and perform all acts and things not inconsistent with the enabling act, the constitution and the statutes of this state as it may deem necessary and proper relating to the leasing of state land for coal mining purposes.

En. Sec. 44, Ch. 60, L. 1927.

1805.45. Report and payment of royalty. On or before the fifteenth day of each calendar month the lessee shall make a report to the commissioner in such form as may be prescribed by him, showing the number of tons mined during the preceding calendar month, the price obtained therefor at the mine, the total amount of all sales and containing such additional information as may be required by the commissioner, which report shall be verified by the oath of the lessee and be accompanied by payment of the royalty due the state for such preceding month as shown by the report.

En. Sec. 45, Ch. 60, L. 1927.

1805.46. Coal mining permits for private use and for schools. The board may in its discretion grant to any resident of this state a permit for a term of not more than one (1) year to mine coal for the use of himself and his family from any coal deposit belonging to the state of Montana and not under lease upon payment to the state of the flat sum of five dollars (\$5) as a royalty for any amount of coal mined by him not exceeding thirty (30) tons of two thousand (2,000) pounds.

The board may also grant a similar one (1) year permit to the board of trustees of any school district in this state, provided that if such school district requires more than thirty (30) tons of coal per annum then any additional amount required shall be paid for in advance at the rate of twelve and one-half ($12\frac{1}{2}$) cents per ton. Applications for such permits shall be accompanied by an affidavit to the effect that the coal is not wanted for sale or disposal to other parties but that it is wanted for the use of the applicant and his family or for the use of the school district as the case may be.

The granting of such permits shall not prevent the board from issuing the usual coal mining leases on the land from which the coal under such permit is to be taken. In cases of this kind the permittee shall remove the quantity of coal to which he is entitled as expeditiously as possible and his rights under the permit shall then automatically cease upon the issue of the lease.

En. Sec. 46, Ch. 60, L. 1927.

1805.47. Disposition of royalties and other receipts. All fees, royalties, bonuses and penalties collected under coal mining leases shall be credited by the commissioner to the same funds that such receipts under

oil and gas leases on such lands would be credited under the provisions of this act; and in the case of coal mining leases, rentals, and bonuses, if any shall be considered as royalties.

En. Sec. 47, Ch. 60, L. 1927.

(f) Prospecting Permits and Mining Leases.

1805.48. Board may grant prospecting permits. The state board of land commissioners is hereby authorized and empowered in its discretion to issue permits granting the exclusive right to prospect and explore for ores, metals, precious stones and other valuable minerals, except for coal, oil and gas, on any state lands to which the title has been vested and safely secured in the state. This right shall extend to and include all these lands which have been sold but in which such minerals have been reserved by the state of Montana, whether the lands are under certificate of purchase or patents have been issued; provided, however, that in all cases where the lands have been sold with mineral reservations and also in all cases where the lands are under lease for grazing, agriculture or for other purposes, care shall be taken in issuing such prospecting permits to protect the rights of the purchaser or lessee. Wherever deemed necessary a bond may be required for such amount as the board may fix and determine conditioned for the safeguarding of the rights of such purchaser or lessee and the rights of the state.

En. Sec. 48, Ch. 60, L. 1927.

1805.49. Term of permit—Fees—Penalties—Regulations. These permits shall be issued for such length of time as the board may determine in each individual case not exceeding five (5) years; shall describe the land on which the prospecting is permitted; not exceeding one (1) section, prescribe the minimum amount of prospecting and exploration work to be performed each year and fix the penalties to be paid the state for failure to perform such work, both as fixed and determined by the board. The minimum annual prospecting fee shall be ten dollars (\$10) per section, or part thereof, payable annually in advance. This permit shall not authorize the permittee to remove any of the ores, metals, precious stones or other minerals from the land except for the purpose of testing or assaying the same.

En. Sec. 49, Ch. 60, L. 1927.

1805.50. Mining lease. If the prospector discovers ore, metals, precious stones, or other valuable mineral deposits in the lands under his permit and submits satisfactory proof to the board to this effect he shall have the preference right to a mining lease to such land or the ores, metals, precious stones, and other minerals discovered therein on such terms and conditions as the board may prescribe; provided, however, that all such leases shall be on a royalty basis and that the royalty shall not be less than five per centum (5%) of the value of the ores, metals, precious stones or other valuable minerals at the mouth of the mine.

En. Sec. 50, Ch. 60, L. 1927.

1805.51. Disposition of royalties—Fees and penalties. All such royalties, fees and penalties shall be credited to the various funds to which they properly belong in the same manner as now provided in this act for the crediting of oil and gas royalties.

En. Sec. 51, Ch. 60, L. 1927.

(g) Leases and Permits for Limestone, Oil Shale, Clay, Stone, Gravel and Sand.

1805.52. The board may issue leases. Whenever they are found upon state lands to which the title is vested in the state and which lands have not been sold by the state under certificate of purchase or otherwise, deposits of stone, limestone, oil shale, clay, gravel, or sand valuable for building, mining or other commercial purposes, the state board of land commissioners may in its discretion issue to private persons permits or leases for the removal and disposition of such stone, gravel or sand upon such terms and conditions as the board may determine; provided, however, that all such leases shall be upon a royalty basis calculated upon the number of cubic yards removed from the land, and the rates shall be the same that ordinarily would be charged by private owners under similar circumstances, and the fee for issuing the lease shall be the same as for an oil and gas lease. No such lease shall be made for a longer term than five (5) years, and the board may demand a cash deposit to guarantee the payment of the royalties or demand a surety bond or both such cash deposit and bond as the board may determine.

En. Sec. 52, Ch. 60, L. 1927.

1805.53. Disposition of royalties and other receipts. The royalties, fees and penalties received under such leases shall be credited to the various funds to which they properly belong in the same manner as now provided in this act for the crediting of these receipts under oil and gas leases.

En. Sec. 53, Ch. 60, L. 1927.

1805.54. Land may be leased for other purposes. Such portions of the section or other subdivision of the land on which such deposits are located as are not needed for the quarrying or digging and removal of the stone, limestone, oil shale, clay, sand or gravel may be leased for grazing or agricultural purposes the same as other state lands, and in the case that grazing or agricultural leases are issued they shall provide for a right of way across the land for the removal of the stone, limestone, oil shale, clay, gravel, sand or other deposits, but the rights of the lessee shall also be duly protected.

En. Sec. 54, Ch. 60, L. 1927.

1805.55. Stone, gravel and sand permits for public use. The state board of land commissioners is hereby authorized and empowered in its discretion to issue permits upon such terms and conditions as it may determine, not inconsistent with any constitutional or statutory provision

relating to state lands, to the state highway commission, to the board of county commissioners of the several counties of the state and to the governing boards or bodies of cities or towns and of other political subdivisions of the state granting them the right to take, remove and use stone, gravel or sand from any state lands that have not been sold under certificate of purchase or otherwise for the construction, maintenance and improvement of public roads, highways, bridges, streets or alleys. The rights of lessees to the lands on which such stone, gravel or sand may be located shall be properly safeguarded under the terms of the permits.

En. Sec. 55, Ch. 60, L. 1927.

(h) Granting of Easements for Public Purposes.

1805.56. Conveyances and easements to the United States. Any land now or hereafter owned by the state of Montana, and needed by the United States in its irrigation and reclamation work, shall upon application made therefor to the state board of land commissioners be conveyed to the United States at the minimum price of ten dollars (\$10) per acre; and there is hereby granted to the United States over all the lands now owned or hereafter acquired by the state of Montana, an easement for a right of way for ditches, canals, tunnels, telephone and telegraph lines, now constructed, or to be constructed by the United States government, in furtherance of the reclamation of arid lands. All conveyances of state lands shall contain a reservation of such right of way easements. It is further provided that whenever said lands herein granted as a right of way shall cease to be used for such purposes, the same shall revert to the state upon notice to that effect being given to the proper authorities.

En. Sec. 56, Ch. 60, L. 1927.

1805.57. Easements for school sites and grounds and other public uses. The state board of land commissioners is hereby authorized and empowered to grant easements in state lands for schoolhouse sites and grounds, for public parks, community buildings, cemeteries and other public uses upon proper applications accompanied by accurate and duly verified plats from the lawfully constituted authorities having charge of such properties. All such sites, grounds or tracts of land shall be rectangular or square in form unless natural obstacles in the land render such form impractical and shall whenever feasible be located at section corners or at a corner of that portion of the section which is owned by the state, and no easement of this character shall cover more than ten (10) acres of land, the acreage to be computed up to the center of the section line. Whenever the site so granted is located at a section corner or at a corner of the part of the land in the section owned by the state, the charge or compensation for the easement in the land shall be not less than twenty-five per centum (25%) above the appraised value of the land; whenever the site is located on a section line but not at a corner the charge or compensation shall be not less than fifty per cent (50%) above the appraised value of the land. Whenever the site

is not located on the section line or lines as aforesaid, the charge or compensation to be paid to the state shall be determined by the board after examination of the land by the chief field agent or one of his assistants and report made by him. The board shall cause deeds to be issued for all such easements that it may grant.

En. Sec. 57, Ch. 60, L. 1927.

1805.58. Right of way for public highways and streets on state land section lines. There is hereby granted to the people of the state of Montana an easement for right of ways for public highways and streets along section lines on all lands now owned by the state or which may hereafter become the property of the state for all public highways and streets of which the center lines follow the section lines bounding such state lands to the extent of one-half the width of such highways or streets, on either side of the section line, or on both sides of the section line, depending upon whether there is state land on one side of the section line only, as is usually the case, or on both sides, which half shall not exceed thirty (30) feet. This easement for such right of ways for public highways and streets shall take effect when the proceedings for the laying out, opening and establishment of such public highways or streets have been completed according to law by the board of county commissioners of the county where such public highways or streets are located or by the board, council or governing body of the city or town within the corporate limits of which such public highways or streets are located; but it shall not be necessary to make the state board of land commissioners or the state of Montana a party to the proceedings for the laying out, opening and establishment of such public highways or streets along section lines bounding state lands. Whenever any such highway or street shall cease to be used as such, this easement shall automatically terminate and the state lands in which it has been granted shall automatically revert to the state.

The board of county commissioners or the governing body of the city or town, as the case may be, shall notify the commissioner of state lands whenever the proceedings for the laying out, opening and establishment of such highway or street have been completed and also when such highway or street has ceased to be used as such, and shall in both cases give an accurate and complete description of the public highway or street so established or closed on state land section lines.

En. Sec. 58, Ch. 60, L. 1927.

1805.59. Right of way easement applies to past proceedings. This grant of easements for public highways and streets of which the center lines follow the section lines bounding state lands shall also extend and apply to all such highways and streets now laid out, opened and established by the proper authorities whether or not the state board of land commissioners has been made a party to the proceedings or not, and irrespective of whether or not the right of way easements have been granted by the board, if the lands still belong to the state of Montana.

En. Sec. 59, Ch. 60, L. 1927.

1805.60. Right of way easements on section lines on state lands under certificate of purchase. In the case of right of ways for such highways or streets of which the center lines follow the section lines of state lands which have been sold under certificate of purchase but for which patents have not been issued, the owners of the certificates of purchase shall be made parties to the proceedings for the laying out of the highways or streets the same way as the owners of land in fee simple and such holders of certificate of purchase shall have the right to grant such right of way to the full extent of their interest in the land affected; but the state board of land commissioners need not be made a party to the proceedings.

En. Sec. 60, Ch. 60, L. 1927.

1805.61. Easements for right of ways outside state land section lines—Rights of purchasers. The right of way for public highways on state lands must always follow the section lines when physically practicable. The state board of land commissioners shall be the judge of whether or not it is necessary to deviate from the section lines, and the board is hereby authorized and empowered to grant easements for right of ways for highways and streets outside the state land section lines through proceedings as follows:

Application must be made by the board of county commissioners, or by the council or governing board or body of the city or town having jurisdiction, which application shall describe the proposed right of way according to the survey, show the necessity for the proposed highway or street and give such additional information as the board may require. This application shall be accompanied by two exact copies of the official plat of the proposed highway or street duly verified by the affidavit of the county surveyor or county or city engineer, or other engineer having prepared the same, indorsed thereon. These plats shall show the quantity of land taken by the proposed highway or street from each forty-acre tract or government lot of state land over or through which it passes and also the amount of land remaining in each portion of such forty-acre tract or government lot. When deemed necessary by the board, the aforesaid plats shall show all these facts for such smaller subdivisions as the circumstances may render desirable for the state.

Upon the filing of such application and plats, the commissioner of state lands and investments shall whenever he deems it necessary cause the proposed right of way to be viewed and examined by the chief field agent or some assistant field agent who shall report his findings to the board. The board shall thereupon consider the application and report and take such action as it deems proper, including the fixing of compensation and damages to be paid to the state. The compensation so fixed shall be the full market value of the estate or interest disposed of through the granting of such right of way easement, and the damages shall be the actual damages resulting to the remaining land as nearly as the same can be ascertained. If the right of way is granted according to the plat, then such plat shall become the official plat thereof, and one copy shall be retained in the office of the commissioner and the other copy shall be returned to the county, city or town from which it was received. The

board shall cause right of way deeds to be issued for all such easements that it may hereafter grant upon full payment therefor being made.

If the state land over or through which such right of way outside of section lines is applied for, is under certificate of purchase or under sales contract, the purchaser, or his assignee, must be made a party to the proceedings, and his consent in writing to the laying out and establishment of the proposed highway and to the amount of compensation and damages to be paid must be filed with the board before such right of way shall be granted. The board shall be the judge of how much of such compensation and damages shall be paid to the state and applied on the certificate of purchase or sales contract and of how much thereof, if any, shall be paid to the purchaser, as the circumstances in each individual case may warrant. The provisions of this paragraph shall apply to all grants of right of ways on state lands outside of section lines. The interest and equity of such purchaser or his assignee shall be subject to proceedings in eminent domain.

En. Sec. 61, Ch. 60, L. 1927.

1805.62. Right of way easements for railroads and other purposes. The state board of land commissioners may grant an easement for right of way across or upon any portion of state lands for any ditch, reservoir, railroad, private road, telegraph or telephone line, or for any other public use, as defined in the Code of Civil Procedure; provided, that this section shall not be construed to grant authority to convey any such land, except for the purposes above set forth; and provided further, that whenever lands granted for any of the purposes mentioned in this section shall cease to be used for such purposes, said easements shall forthwith terminate upon notice to that effect to the person to whom such grant was made, served at his last known postoffice address. The board shall charge and cause to be collected the full market value of the estate or interest disposed of through the granting of any such easement and also fix, charge and cause to be collected the amount of the actual damages resulting to the remaining land or lands from the granting of such easement as nearly as the same can be ascertained.

En. Sec. 62, Ch. 60, L. 1927.

1805.63. Settlement with lessees. Whenever any kind of a right of way easement has been granted under this act and the state land in which it is granted is under lease, the board of county commissioners, or other authority or corporation or person laying out the right of way shall give due and timely notice to the lessee and shall make just settlement with him for any damages resulting to his improvements or crops or leasehold interests. Upon such settlement being made, the lessee shall open or move any fences that may obstruct the right of way over the lands under his lease and otherwise co-operate in the opening of the right of way. Proof shall be filed with the board that such settlement has been made before the deed to the easement is issued.

En. Sec. 63, Ch. 60, L. 1927.

(i) Sale of State Lands.

1805.64. Certain state lands not subject to sale. Lands classified as timber lands shall not be subject to sale, but timber thereon may be sold and disposed of in the manner provided by law. Lands which in the judgment of the board are likely to contain valuable deposits of coal, oil, oil shale, gas, phosphate, metals, sodium and, or other valuable mineral deposits, shall not be subject to sale, either the surface land or any of such deposits therein; provided, however, that this shall not be so construed as to prohibit the sale of lands containing sand, gravel, building stone, brick clay or similar materials.

En. Sec. 64, Ch. 60, L. 1927.

For text treatment of this subject see vol. 21 Cal. Jur. 690.

1805.65. Mineral reservations in state lands. All coal, oil, oil shale, gas, phosphate, sodium and other mineral deposits, except sand, gravel, building stone and brick clay, in lands belonging to the state of Montana, or which may hereafter become the property of the state, which have not already been reserved by the United States, are hereby reserved to the state. All such deposits are reserved from sale except upon a rental and royalty basis as provided in this act. In the case of lands sold after this act takes effect, a purchaser of any lands belonging to the state or which may hereafter become the property of the state shall acquire no right, title, or interest in or to any of such deposits, except that where the oil and gas have not been reserved by the United States the purchaser of mortgage lands shall be entitled to receive a royalty of one per centum (1%) of all gas or oil produced from such mortgage lands, such royalty to be payable directly to him by the lessee either in gas or oil or in cash as the purchaser may desire and determine; provided, however, that the purchaser of the mortgage land shall not have any right to lease such land or any part thereof for oil and gas exploration or production; the state shall have the sole power to lease the land for all mineral purposes. The state also reserves for itself and its lessees the right to enter upon such lands to prospect for, develop, mine and remove such deposits and to occupy and use so much of the surface of the said lands as may be required for all purposes reasonably extending to the exploring for, mining and removal of such deposits therefrom, but the lessee shall make just payment to the purchaser for all damage done by reason of such entry upon the land and the use and occupancy of the surface thereof.

These mineral reservations shall not apply to lands that the state has acquired through the foreclosure of mortgages or otherwise acquired in connection with mortgages given to it when the mortgagor or anyone claiming under him exercises his right to repurchase such lands within the statutory period of one year and ninety days from the time that the state so acquired title. In cases of this kind all rights shall go with the land that passed with the land from the mortgagor to the state; but in case that such lands are not so repurchased, then the same shall be subject to these mineral reservations the same as other state lands.

En. Sec. 65, Ch. 60, L. 1927.

1805.66. Certain shore lands not subject to sale. There is also reserved from sale from all state lands bordering on navigable lakes or bordering on such non-navigable meandered lakes as the board may deem valuable for summer resorts and from all state lands bordering on navigable streams a strip of land which shall include all the land lying between low-water mark and high-water mark and which in addition shall extend in width landward from the line of high-water mark of such lake or stream the full width of the forty (40) acre tract or government lot abutting the line of high-water mark; provided, however, that if the width of such abutting government lot at its narrowest point is less than one hundred (100) feet, then the strip hereby reserved shall extend to and include the next adjoining forty (40) acre tract or government lot. The land reserved from sale by this section shall be subject to the granting of easements the same as other state lands.

The state board of land commissioners may in its discretion cause any part of the lands bordering on such lakes and on navigable streams which are hereby reserved from sale to be surveyed and platted into blocks and lots, the lots to be not less than one hundred and twenty-five feet (125) in width, the width to be measured in the general direction of the abutting waterfront; but in all such surveys and plats the aforesaid strip of one hundred (100) feet in width along the waterfront shall be reserved for the use and enjoyment of the public.

Such strips of land bordering on meandering lakes or on navigable streams, except the strip lying between low-water and high-water mark, whether surveyed and platted into blocks and lots or not, may, however, be leased as provided in this act for the leasing of other state lands.

En. Sec. 66, Ch. 60, L. 1927.

1805.67. Certain lands to be platted before sale. Any part of state lands adjacent to cities or towns and other state lands which in the opinion of the board may be wanted for residence or business lots shall before sale, at such time as the board may deem to be for the best interests of the state, be surveyed and laid off in blocks, lots, streets, alleys, avenues, highways, public squares, market places and parks, in conformity with the laws of the state for the survey and platting of townsites and additions thereto, conforming as nearly as may be with the ordinances of such city or town regarding the platting of additions thereto; and the state board of land commissioners must cause correct maps and plats of such lands to be made and recorded when so surveyed and not otherwise. No fee shall be charged by the county recorder, or by any city officer, for filing or recording such maps or plats, when recorded on behalf of the state.

Before the lands so surveyed and laid off are offered for sale the same shall be appraised, a separate appraisal to be placed on each lot. Such surveyed and platted land may then be sold in the same manner and upon the same terms and conditions as other state lands are sold.

En. Sec. 67, Ch. 60, L. 1927.

1805.68. Surveying and platting left to discretion of board. It shall be entirely optional with the board whether or not state lands, or any

part thereof, shall be surveyed, platted and laid off into blocks and lots as hereinabove provided, as may appear to be for the best interests of the state. All lands of the fourth class as defined by section 1, article 17, of the constitution shall, however, be subdivided into lots or tracts of not more than five (5) acres each before being offered for sale and the lots must then be sold alternately as provided by section 2, article 17, of the constitution, at regular sales of state lands.

When such tracts of five (5) acres each or less have been sold, the board shall whenever deemed necessary cause the plat thereof to be filed for record with the county clerk and recorder of the county in which the land is situated, but if the same purchaser bids in two or more adjoining lots or tracts, all the lots so purchased shall at the option of the purchaser be included in one certificate of purchase.

En. Sec. 68, Ch. 60, L. 1927.

1805.69. Lands within federal irrigation projects. Whenever state lands are located within the boundaries of federal irrigation projects, the land shall be sold in conformity with the classification of farm units as made by the United States, and all certificates of purchase issued for such lands shall show that the lands are located within a federal irrigation project and are or will be liable for their proper share of the reclamation charges.

En. Sec. 69, Ch. 60, L. 1927.

1805.70. Board to decide when to hold sales and what lands to sell. The state board of land commissioners is hereby vested with the power and authority to decide when sales of state lands are to be held and what state lands are to be offered for sale, subject to the limitations of this act, as the best interests of the state may appear to require; provided, however, that as a general rule no sale of state lands shall be held unless applications have been made for the purchase of lands within one (1) county by prospective purchasers representing at least twelve (12) families.

En. Sec. 70, Ch. 60, L. 1927.

1805.71. Who may purchase and how much. State lands shall be sold only to citizens of the United States or to persons who have declared their intentions to become citizens, or to corporations organized under the laws of this state. No person shall be qualified to purchase state land who has not reached the age of twenty-one (21) years. As far as possible to determine the lands shall be sold only to actual settlers or to persons who will improve the same, and not to persons who are likely to hold such lands for speculative purposes intending to resell the same at a higher price without having added anything to their value. No person or corporation shall be entitled to purchase more than one section of state land, and this area shall not include more than one hundred and sixty (160) acres of land susceptible of irrigation. These limitations as to area and irrigableness shall not apply to lands acquired by the state in connection with the foreclosure of its mortgages.

En. Sec. 71, Ch. 60, L. 1927.

For text treatment of this subject see vol. 21 Cal. Jur. 694.

1805.72. Sale at public auction—Where held. All sales of state lands shall be only at public auction held at the county courthouse of the county in which the lands are located; provided, however, that in case no suitable room can be found in such courthouse at the time for holding the sale, then the sale may be transferred to a more convenient place within a reasonable distance of such courthouse by public announcement made at the courthouse at the time fixed for beginning the sale; and provided further that the procedure for the sale of the so-called “mortgage lands” acquired by the state through the foreclosure of mortgages, or obtained otherwise in connection with such mortgages, shall be subject to the modifications hereinafter provided.

En. Sec. 72, Ch. 60, L. 1927.

1805.73. Notice of sale. The commissioner shall cause notice of every such sale to be given by publication in the official county paper of the county where the sale is to be held once each week through four consecutive weeks next preceding the date of sale. Such notice shall give the day, date and time of day of the beginning of the sale; shall contain a list of all the tracts to be offered for sale showing the township and range in which they are located, describing the same with reference to section number and subdivision of the section, or with reference to block and lot if surveyed, the number of acres in unplatted lands and the appraised value per acre and also the appraised value of each lot. As a general rule nonirrigable farming lands shall be listed in quarter sections; grazing lands may be listed in larger tracts not exceeding one (1) section. These limitations need not apply to mortgage lands.

For the convenience of the bidders, the commissioner may assign the tracts advertised a consecutive series of sales numbers and show the sales number of each tract in the notice of sale.

The notice shall also give the terms and conditions of sale, and such additional information as the commissioner may deem useful.

En. Sec. 73, Ch. 60, L. 1927.

1805.74. Mortgage lands to be included. Whenever a sale of state lands is held in any county of the state, all the mortgage lands owned by the state in such county shall be offered for sale at the appraised value and included in the notice of sale herein provided for, whether such mortgage lands have been previously advertised for sale or not, unless the board for good reasons shall direct that such lands shall not be included in the sale.

En. Sec. 74, Ch. 60, L. 1927.

1805.75. Sales, how conducted—Proceeds. At the time fixed for the sale, the lands shall be offered for sale at auction in the order they appear in the notice of sale under the personal direction of the commissioner or the assistant commissioner, one of whom shall be present at the sale, and sold to the highest qualified bidder; provided, however, that no lands shall be sold for less than the appraised value and in no case, except mortgage lands, for less than ten dollars (\$10) per acre; provided, further,

that in case the land is offered for sale at public auction, the old lessee need not make a higher bid than others, but shall if bidding an equal amount be given the preference. The lands shall be sold as nearly as practicable according to the subdivisions in which they are advertised, and care shall be taken not to subdivide any tract in such a way as to separate remaining portions from a water supply or from section lines or public highways. The sale may be adjourned from day to day until all the lands advertised have been offered for sale.

If any successful bidder at such sale refuses or neglects to make the initial payment required to be made on the land purchased by him, he shall forfeit to the state not less than fifty dollars (\$50) nor more than one thousand dollars (\$1,000) to be determined by the state board of land commissioners according to the circumstances of the case. If such forfeiture is not paid when notice of the amount of the forfeiture has been served by the commissioner, the attorney general shall institute a suit for the recovery thereof in the name of the state of Montana.

The proceeds from the lands sold, including all subsequent payments on the principal, shall be credited to the permanent fund arising from the grant to which it belongs and shall become and forever remain an inseparable and inviolable part thereof. All payments on interest shall be credited to the proper income fund and shall be available for use as provided by law.

En. Sec. 75, Ch. 60, L. 1927.

1805.76. Board may prescribe additional rules and regulations. The state board of land commissioners may prescribe such additional rules and regulations for the conduct of these sales as in its judgment the interests of the state may demand.

En. Sec. 76, Ch. 60, L. 1927.

1805.77. Mortgage lands may be sold on advertising for sealed bids. Mortgage lands may also be advertised and sold at other than the regular sales of state lands at county seats whenever the board so orders, and in all such cases the sale shall be at the office of the commissioner by means of sealed bids. Before mortgage lands can be so sold, notice of the sale containing substantially the same information as the notice for the sale of other state lands, must be given by publication once each week for three (3) successive weeks in the official county paper of the county where the land is located. Sealed bids shall then be received by the commissioner up to a certain date not less than twenty-one (21) days and not more than thirty (30) days from the date of the first publication of the notice of sale, and this date must be given in the notice. On such date the bids shall be opened and the highest bid accepted if it is for not less than the appraised value and is accompanied by the required initial payment and fees.

En. Sec. 77, Ch. 60, L. 1927.

1805.78. Mortgage lands may be sold at private sale. After mortgage lands have once been advertised for sale either at the office of the commissioner or at a sale of state lands at the county seat of the county

where they are located, and the same have not been sold, they may be sold by the commissioner at private sale at any time within two (2) years from the date fixed for the sale under the previous notice to any qualified person who will pay the appraised price as advertised and make the required initial payment.

En. Sec. 78, Ch. 60, L. 1927.

1805.79. Terms of payment. Every purchaser of state land of any class whatever shall pay in cash on the day of sale such portion of the purchase price as he may desire but in no case less than ten per centum (10%) of the total sales price, and in case the balance on the purchase price is not an exact multiple of twenty-five dollars (\$25), then he shall pay such additional sum as is necessary to reduce the balance to an even multiple of twenty-five dollars (\$25); he shall also in all cases pay the sum of five dollars (\$5) as a fee for each certificate of purchase to be issued to him.

The balance of the purchase price shall draw interest at the rate of five per centum (5%) per annum, payable annually, and the balance of the purchase price itself shall be payable through a period of thirty-three (33) years on the amortization plan, which is hereby defined as being that plan under which part of the principal is required to be paid each time interest becomes due and payable, and under which this part payment on the principal increases at each succeeding installment in the same amount that the interest payment decreases so that the combined amount due on principal and interest on each due date remains the same until the loan or bond is paid in full; provided, however, that the amount of the last installment may vary from the other installments to the extent resulting from disregarding fractional cents in the previous installments; provided, however, that the balance of the purchase price on town and city lots shall be payable on the amortization plan through a period of twenty (20) years; and provided further that the board may at any time fix a shorter period than twenty (20) years for the payment of such balance on town and city lots, and different periods of time may be established for different towns and cities as the best interests of the state may appear to demand.

En. Sec. 79, Ch. 60, L. 1927.

1805.80. Conversion of certain other certificates to amortization certificates. Any certificate of purchase of state lands issued prior to February 13, 1923, and now in effect may be converted into an amortization certificate on the plan set forth in this act and running for a period of thirty-three (33) years from the date of conversion in the case of agricultural and grazing lands, and for a period of twenty (20) years in the case of town and city lots, upon application of the owner of such certificate, if the state board of land commissioners deems the issuance of such new amortization certificate safe and advantageous to the state. The said board may in its discretion allow to be included in the principal of the new certificate a portion of the delinquent installments of principal and interest if any on the old certificate, but there shall be charged and paid penalty interest on all such delinquent installments at the rate of

six per centum (6%) per annum from the time they severally became due to the date of conversion; and the total amount due under the old certificate shall be reduced by payment to some multiple of twenty-five (\$25) before the issuance of the new certificate; provided, however, that all such converted certificates shall give the state the same lien upon crops and improvements on the land under the certificate as is provided in this act in the case of new certificates of purchase hereafter issued. The giving of such lien to the state in the new certificate shall be an absolute condition for the issuance of the new certificate.

En. Sec. 80, Ch. 60, L. 1927.

1805.81. Lien on improvements and crops for principal, interest, penalty interest and taxes. The state shall have a lien prior and superior to all other liens, excepting threshermen's liens and seed liens as specified in sections 8355 and 8366 of the Revised Codes of Montana, 1921, which shall have priority as specified in chapter 116 of the session laws of 1925, upon all buildings, structures, fences and all other improvements upon the lands so sold and also upon all crops growing upon any of these lands, and also upon such crops after they have been separated from the lands, for all due and delinquent installments of principal and interest, and penalty interest and taxes under the certificate of purchase and also for all installments becoming due during the calendar year in which the crop is harvested, and such lien is hereby expressly reserved. Any person purchasing or otherwise acquiring such improvements or crops or any part thereof, takes the same subject to such lien. Any agent or representative of the department or sheriff of the county in which the land is located, or his deputy may demand of the purchaser or his agent payment of the amounts due the state and if the same are not paid upon such demand, the officer making such demand, or any representative of the department, may forthwith seize such improvements and crops and upon giving three days' notice, sell and dispose of, either at private or public sale, sufficient of the said crops or improvements or of both to pay the amounts due the state together with cost and expenses of seizure and sale.

En. Sec. 81, Ch. 60, L. 1927.

1805.82. Approval or disapproval of sales. All sales of state lands, and all sales of timber on state lands, shall be subject to the approval and confirmation by the state board of land commissioners, and no sale shall be deemed completed until after such approval and confirmation. The board shall have the power and it shall be its duty to disapprove any sale which in its opinion would be disadvantageous to the state.

En. Sec. 82, Ch. 60, L. 1927.

1805.83. Settlement for improvements. Whenever any state land has been sold on which there are improvements belonging to a lessee, and some other person than such lessee becomes the purchaser he shall be required to make settlement with such lessee for all improvements on the land belonging to the lessee before the issuing of the certificate of purchase. All provisions of this act relating to the payment and settle-

ment for improvements on state lands between a former lessee and a new lessee shall apply to the settlement between a lessee and the purchaser.

En. Sec. 83, Ch. 60, L. 1927.

1805.84. Time of possession. In the case of lands under lease the purchaser shall be given possession by the state on March first next succeeding the date of sale and not before unless the lease expires prior to that date, except through special agreement between the purchaser and the lessee.

En. Sec. 84, Ch. 60, L. 1927.

1805.85. Certificate of purchase. Upon the approval of the sale and receipt of satisfactory evidence of settlement with the former lessee, if any, for improvements on the land, the commissioner shall execute and mail to the purchaser a certificate of purchase signed by the governor as president of the state board of land commissioners and by the commissioner as secretary of the board and attested by the seal of the state board of land commissioners. Such certificate of purchase shall contain the date of sale, the name and postoffice address of the purchaser, a description of the land, the total purchase price, the amount paid on the day of sale, the balance unpaid and shall also show the amount and due date of each installment of principal and interest to the time of maturity. The certificate shall reserve the easements for right of ways granted by the statutes in favor of the United States and other easements that may have been granted by the board and shall contain the reservations in favor of the state provided for in this act relating to coal, oil and mineral rights in the land.

The certificate shall also contain information in regard to the lien of the state on crops and improvements on the land for installments of principal and interest and taxes; and it shall contain such additional conditions, agreements, and information as the board may deem necessary in order to carry out the intent of this act.

En. Sec. 85, Ch. 60, L. 1927.

1805.86. Time from which balance on purchase price draws interest. The balance of the purchase price shall draw interest from the date on which the sale was confirmed and approved by the state board of land commissioners, and all installments on principal and interest shall become due and payable on that date in each succeeding year until payment has been made in full.

En. Sec. 86, Ch. 60, L. 1927.

1805.87. Payments of installments. The commissioner shall not be required to accept fractional payments of the installments on certificate of purchase, on account of the complications arising from the division of payments. The purchaser may make payment of one or more installments before the same become due but unless such payments are made at least six (6) months before the installments become due, no reduction shall be made in the interest payments. In case installments on principal and interest are paid more than six (6) months prior to the due date,

then the interest from the date of such payment shall be figured upon the balance of the principal unpaid after such advance payment has been made up to the date on which it comes due. If for any reason any installment is not paid when due, then the total of such installment, including payment on the principal and payment on interest, shall draw penalty interest at the rate of six per centum (6%) per annum from the date due until the date actually paid. Payment may be made in full at any time before maturity by paying the balance on the principal and interest accrued up to the date of such payment.

En. Sec. 87, Ch. 60, L. 1927.

1805.88. Default in payment of purchase price—Cancellation of certificate. Whenever any purchaser of state land hereafter sold, or the assignee, shall default for a period of thirty (30) days or more in the payment of any of the installments due on his certificate of purchase, the certificate shall be subject to cancellation and the board shall cause to be mailed to him at his last known postoffice address a notice of default and pending cancellation which notice shall give him sixty (60) additional days from the date of mailing such notice in which to make payment of the delinquent installment or installments with penalty interest. If he fails to make such payment within that period the certificate of purchase shall from that date and without further notice be null and void, the duplicate of the certificate in the office of the commissioner shall be canceled and the land under the certificate shall revert to the state and such land together with all buildings, fences and other improvements thereon shall become the property of the state to the same extent as other state lands and shall be open to lease and sale.

En. Sec. 88, Ch. 60, L. 1927.

1805.89. Repurchase of land upon which certificate has been canceled. In all cases where a certificate of purchase heretofore issued has been canceled as provided by section 88 of this act upon written application to repurchase said lands made by the original purchaser, his heirs, assigns or devisees [devisees] to the state board of land commissioners filed within one (1) year and ninety (90) days from the date of cancellation of said certificate of purchase by the state accompanied by a payment of ten per centum (10%) of the total amount then due the state which total amount shall include the amount remaining unpaid to the state at the time said certificate was canceled and penalty interest at the rate of six per centum (6%) upon all delinquent installments from the date due until the date of repurchase and any taxes which may have been paid by the state on said lands or which may be delinquent at the time said application to repurchase is made the state board of land commissioners shall enter into a contract with such original purchaser, his heirs, assigns, or devisees [devisees], for the sale of said lands, by which the balance of said sum shall be paid on the amortization plan during a period not exceeding thirty-five (35) years from the date of the execution of the contract as defined by this act. Payment may be made in full at any time before maturity.

Such application shall take precedence over any application to purchase said lands by any person other than said original purchaser, his heirs, assigns, or devisees [devisees]; provided, however, that the board shall have in its discretion the power to convey by deed and take a mortgage to cover the balance due on said purchase price in lieu of the sale under contract above provided. This reinstatement shall not have the effect of canceling any lease that the state may have issued on the land, but the reinstated purchaser shall be entitled to the rents under the lease from the date of such reinstatement, and he may make any arrangements satisfactory to himself and the lessee for the use and possession of the land before the date of lease expiration.

En. Sec. 89, Ch. 60, L. 1927.

1805.90. Certificates may be assigned. Certificates of purchase may be assigned to a citizen of the United States or to a person who has declared his intention to become such citizen or to a corporation organized under the laws of the state of Montana. Such assignments shall be made on forms to be prescribed by the commissioner, shall be duly acknowledged as other conveyances of real estate, and shall be executed in duplicate, one (1) copy to be filed and retained in the office of the commissioner and one (1) copy to be retained by the assignee. A person shall not be qualified to receive such assignment if the lands he has already purchased from the state together with the lands included in the assignment exceed one (1) section; the assignee must in all respects possess the same qualifications as an original purchaser.

En. Sec. 90, Ch. 60, L. 1927.

For text treatment of this subject see vol. 21 Cal. Jur. 714.

1805.91. Lost certificate. Whenever any certificate of purchase to state lands has been lost or is wrongfully withheld by any person from the owner thereof the rightful owner may make application to the state board of land commissioners for issuing of a lieu certificate. This application shall be accompanied by an affidavit from the owner of the certificate setting forth the facts in regard to the loss or unlawful withholding of the certificate and by a certificate from the county clerk and recorder of the county in which the land is located showing all instruments of record in his office affecting the title to the land under the certificate. The board shall thereupon cause a lieu certificate of purchase to be issued to the applicant if in the judgment of the board the facts warrant the issue thereof.

En. Sec. 91, Ch. 60, L. 1927.

1805.92. Land subject to taxation. The interest of the purchaser in state lands shall be subject to taxation to the full extent of such interest. The assessor shall assess the purchaser for such percentage of the full and true value of the land as the initial payment on the land and all installments of principal due on the certificate of purchase prior to the first Monday of March of the year for which the land is assessed is of the full purchase price of the land. Provided that the holder of certifi-

cate of purchase to lands within irrigation districts shall be liable for the entire tax levied against the land held thereunder on account of such irrigation district.

The improvements on the land shall be assessed and taxed as other improvements on farm lands.

On or before the fifteenth (15th) day of March of each year, the commissioner shall furnish the county assessor of each county with a complete list of all state lands sold in his county during the year ending on the first Monday of March of such year. This list shall show the name and address of the purchaser, give the legal description of the land, the acreage contained therein, the total purchase price, the amount paid thereon and the balance unpaid. It shall also contain tables, or other information, which will enable the assessor to calculate what portion of the full value of the land will be subject to taxation for each succeeding year of the certificate.

En. Sec. 92, Ch. 60, L. 1927.

For text treatment of this subject see vol. 21 Cal. Jur. 713.

1805.93. Purchaser of state lands may sign petitions relating to irrigation districts—Interest purchaser subject to lien. A purchaser of state lands is hereby authorized and empowered to sign any petition that he may desire to sign for the creation of an irrigation district and the inclusion of the land purchased from the state in such irrigation district and any other petition relating to irrigation districts affecting the land so purchased by him from the state. Such petition or petitions shall have the effect of making all the interest that he then has in such land purchased from the state and all interest which he may subsequently acquire therein subject to the same liens and charges as privately owned lands under such irrigation district; but if for any reason his certificate to such state lands and his rights thereunder are forfeited and canceled, no lien or charge of any kind shall then attach to the land.

The interest of a purchaser of state lands in the land purchased shall be subject to the same liens as other real estate; provided, however, that in the case of sale only the interest of the purchaser or of the assignee shall be sold. In the case of any sale under the provisions of this section, including the sale for taxes, the purchaser shall succeed to all the rights of the purchaser from the state under the certificate of purchase and a new certificate of purchase shall be issued to the person entitled thereto, upon satisfactory proof being submitted to the board; provided, however, that in the case of sale under execution or decree of court such new certificate of purchase shall not be issued by the board until the period of redemption from such sale has expired and the sheriff's deed has been issued. In the case of sale for taxes, the new certificate shall not be issued until the tax deed has been issued.

En. Sec. 93, Ch. 60, L. 1927.

1805.94. If lands revert. In case any lands sold under the provisions of this act shall revert to the state, for any cause whatsoever, the commissioner of state lands shall notify the assessor and the county

treasurer of the county in which the land is situated, and upon the receipt of such notice it shall be the duty of the assessor to cancel any assessment of said land for that year, and of the county treasurer to cancel all taxes remaining unpaid against the land for that and all previous years.

En. Sec. 94, Ch. 60, L. 1927.

1805.95. Patents. When the purchase price has been paid in full together with interest according to the certificate, the owner thereof shall be entitled to receive a patent for the land under such certificate.

En. Sec. 95, Ch. 60, L. 1927.

For text treatment of this subject see vol. 21 Cal. Jur. 746.

1805.96. Patents, how executed. The governor, and in the case of his absence or inability, the lieutenant-governor shall be and is hereby authorized to execute deed or patent of conveyance transferring without covenants any and all lands sold by the state board of land commissioners under the laws of this state when full payment has been made therefor. Such deed or patent shall contain the reservation of easements for right of ways to the United States, reservation of all minerals in the land as provided in this act, and all other reservations to which the particular land conveyed may be subject. In case the land is located within the boundaries of a federal irrigation project, the patent shall contain a lien clause substantially in the following form: "The land hereby conveyed is located within the boundaries of a federal irrigation project and is subject to all liens which the United States may have thereon by reason of its being located under such irrigation project." Such deed or patent shall be attested by the secretary of state, countersigned by the commissioner and have the great seal of the state and the seal of the state board of land commissioners thereto attached, but need not be acknowledged. A certified copy of the record of any such deed or patent shall be received in evidence in all courts of record of this state the same as the original.

This section shall not be so construed, however, as to require any reservation in a patent which was not an express or implied reservation in the certificate of purchase pursuant to which the patent is issued; the statutes in effect when such certificate of purchase was issued must govern.

En. Sec. 96, Ch. 60, L. 1927.

1805.97. Limitation for cancellation of patent. No action shall be brought to vacate or cancel any patent issued by the state after the expiration of two (2) years from the date of such patent, except upon the ground of fraud.

En. Sec. 97, Ch. 60, L. 1927.

(j) General Provisions Concerning Investments.

1805.98. Investment of permanent funds. All moneys belonging to the public school permanent fund and to the other permanent funds of

the educational, charitable and penal institutions of the state, and all permanent funds subject to the administration of the board under article XXI of the state constitution shall be safely invested by the state board of land commissioners in bonds of school districts within the state of Montana; in bonds of the several counties and cities of the state of Montana; in bonds of the state of Montana or of the United States; in capitol building bonds of the state of Montana, now issued or which may hereafter be issued; in bonds issued by the federal land banks, in interest-bearing warrants upon the general fund of the state and in interest-bearing warrants upon the general fund, the poor fund, the road fund, or upon the bridge fund of the several counties of the state of Montana, and in interest-bearing school district warrants, and in first mortgages on improved and crop-producing farm lands in this state free from all prior liens and encumbrances; all of such investments to be subject to the regulations and limitations of this act.

En. Sec. 98, Ch. 60, L. 1927.

1805.99. Certain securities to be payable on the amortization plan.

All bonds issued in this state in which such investments are hereafter made must be issued and payable on the amortization plan; provided, however, that in case there are not sufficient amortization bonds and amortization mortgages available to keep the aforesaid permanent funds invested; then the funds may be invested in other forms of bonds lawfully issued by the state of Montana or any of its political subdivisions; but this provision shall not be so construed as to allow the investment of any of these funds in irrigation district bonds or in any form of improvement district bonds. In negotiating for the purchase of bonds the board shall use its influence towards having the installments of principal and interest become payable semi-annually in June and December of each year as far as practicable and consistent with other statutes.

En. Sec. 99, Ch. 60, L. 1927.

1805.100. Conversion of other forms of bonds into amortization bonds. All bonds in which such permanent funds of the state are now invested or in which they hereafter may be invested, whether such bonds are due or not, may be converted into amortization bonds payable through a period of not exceeding twenty (20) years upon resolution duly passed by the board or officers of the political subdivision of the state through which such bonds were originally issued, if the state board of land commissioners deems such change to amortization bonds to be safe and advantageous to the state and authorizes such change. The interest on such converted bonds shall be such as the state board of land commissioners may fix and determine in each individual case but shall not be less than the rate of interest on the bonds to be converted and shall in no case exceed six per centum (6%) per annum.

En. Sec. 100, Ch. 60, L. 1927.

1805.101. Purchase of county warrants or school district warrants. It shall be entirely optional with the board whether or not any portion of the aforesaid permanent funds shall at any time be invested in county

warrants or school district warrants, as the circumstances in each individual case may appear to justify. In case of the investment in such warrants, such warrants must be purchased at face value without payment for accrued interest directly from the county issuing the same in amounts of not less than five hundred dollars (\$500) for each purchase; must be issued in the ordinary and regular course of business, and must be registered and drawing interest at the rate provided by law.

En. Sec. 101, Ch. 60, L. 1927.

1805.102. Investment of income funds. Moneys in the public school income fund and in other income funds for which there is no immediate demand, may be invested in state general fund warrants and in county warrants upon the general fund, the poor fund, the road fund, or school district warrants, subject to the limitations prescribed in the preceding section; provided, however, that they shall not be invested in such warrants, unless such warrants will be payable at such time as to make the income available when the funds are to be paid out for the purposes for which they are intended.

En. Sec. 102, Ch. 60, L. 1927.

1805.103. Approval of securities. The board shall not invest in any bonds unless a complete transcript of the proceedings for their issue has been submitted to the attorney general and his opinion rendered in writing finding that the bonds are lawfully issued and a valid indebtedness of the state, county, city or school district issuing the same.

En. Sec. 103, Ch. 60, L. 1927.

1805.104. Securities, how paid. Whenever the state board of land commissioners has purchased any bonds, county warrants, or school district warrants, the commissioner shall upon the final approval and receipt thereof, deliver such securities to the state treasurer, and shall at the same time write an order to the state auditor authorizing and directing him to issue his warrant or warrants upon the state treasurer, payable to the state treasurer, for the amount invested by the state in such security or securities and for the amount of accrued interest if any. Both the order to the auditor and the warrant or warrants issued by him to the treasurer shall show the fund or funds from which payment is to be made, the name and address of the person to whom it is to be made and the purpose of the payment. Upon the receipt of the securities and the warrant or warrants from the auditor the state treasurer shall promptly issue his check or checks and mail to the person entitled thereto.

En. Sec. 104, Ch. 60, L. 1927.

1805.105. Treasurer to preserve securities and keep records. The state treasurer shall safely keep and preserve all such securities and shall keep an accurate and complete record thereof; he shall notify the proper official or persons of delinquent payments, and shall keep accurate and complete account of all payments made.

En. Sec. 105, Ch. 60, L. 1927.

(k) *Management and Disposition of State Farm Loans Made Before this Act Takes Effect.*

1805.106. Conversion into amortization mortgages. Whenever any state farm loan owned by the state when this act goes into effect becomes due or delinquent, the mortgagor or the assignee or vendee may make application to the state board of land commissioners to have the loan converted into a thirty-three (33) year amortization loan and mortgage, as defined in this act, to draw interest at the rate of six per centum (6%) per annum and to be secured by a first mortgage on the land under the original mortgage and by additional lands if he has additional lands free from prior liens and encumbrances, the amortization mortgage to be in such form as the state board of land commissioners may prescribe. The board may in its discretion permit delinquent interest, penalty interest and also any sums of money that the state has advanced under the mortgage to be included in the principal of the new loan and mortgage, if the state board deems the including of such delinquent interest and other payments made under the mortgage to be safe and advantageous to the state. Nothing herein contained shall be so construed as to make it obligatory upon the board to permit a loan to be so converted into an amortization loan and amortization mortgage. The board shall at all times do what in its judgment appears to be for the best interest of the state and shall proceed to have the loan foreclosed if that appears to be the safest course to pursue. The provisions of this section shall also apply to nondelinquent mortgages as far as applicable.

En. Sec. 106, Ch. 60, L. 1927.

1805.107. Lien on crops on mortgaged lands. The state shall have a lien prior and superior to all other liens, excepting threshermen's liens and seed liens as specified in sections 8355 and 8366 of the Revised Codes of Montana, 1921, which shall have priority as specified in chapter 116 of the Session Laws of 1925, upon all crops growing on lands given it as security for any such amortization loan converted from another loan and also upon such crops after they have been separated from the land for any installment or installments of principal or interest due or delinquent on the loan together with penalty interest and also for all such installments becoming due during the calendar year in which such crops are harvested, and such lien is hereby expressly reserved. Any person purchasing or otherwise acquiring such crops, or any part thereof, takes the same subject to such lien.

Any officer, agent or person, empowered to represent the department is hereby authorized to seize such crops and upon giving three days' notice to sell, either at private or public sale, sufficient of the said crops to pay the amounts due and delinquent under the mortgage together with costs and expenses of sale. Every such amortization mortgage shall contain a reference to this lien on the crops.

En. Sec. 107, Ch. 60, L. 1927.

1805.108. Attorney general to take charge of delinquent loans and mortgages. Whenever any farm loan owned by the state when this act

goes into effect becomes delinquent for more than one (1) year, and the mortgagor and his vendees fail to pay such loan and fail to have it converted into an amortization loan and mortgage, the commissioner shall notify the attorney general of the default in the conditions of the mortgage, and the attorney general shall then take full charge of such mortgage, and of all such mortgages, and shall proceed to foreclose such mortgages in the name of the state by action in the manner provided by law for the foreclosure of mortgages upon real estate. The attorney general may, however, with the permission of the state board of land commissioners, given in writing in each particular case, permit the mortgagor or his vendee to convey the land under the mortgage by quitclaim deed or other conveyance in place of securing title through foreclosure proceedings, if the lands are free and clear of all other liens and encumbrances except liens for taxes.

En. Sec. 108, Ch. 60, L. 1927.

1805.109. Sheriff's deed may be taken by state—deficiency judgment.

If at the foreclosure sale, no person bids the full amount due on the state under the mortgage including all accrued interest on the loan, all taxes paid by the state under the mortgage and taxes unpaid on the land, if any, and any expenses incurred by the state under the mortgage together with interest on all these items, and the costs and expenses of the foreclosure sale, all as allowed by the court, then in such case the land may either be sold for whatever reasonable sum it will bring and a deficiency judgment taken against the mortgagor or mortgagors, or the state may bid in the land for what it is reasonably worth to the state and a deficiency judgment taken for the balance, as the best interests of the state may appear to demand.

En. Sec. 109, Ch. 60, L. 1927.

1805.110. The mortgagor and parties claiming under him may repurchase lands. Upon written application made by the state board of land commissioners within one (1) year from the date of the sheriff's sale of the land to the state, or within one (1) year from the date of the quitclaim deed or other conveyance to the state, by the original mortgagor or his heirs or assigns or other parties in interest of record, the state board may permit such original mortgagor or other person as aforesaid to repurchase the land for the full amount of the judgment of the state together with interest thereon at the rate of six per centum (6%) per annum from the date of judgment to the date of repurchase, or in the case of quitclaim deed or other conveyance, for the full amount of the claim of the state on the date thereof together with interest thereon at the rate of six per centum (6%) per annum up to the date of repurchase, upon the following terms and conditions, to wit:

The person so repurchasing the property shall pay in cash ten per centum (10%) of the entire judgment of the state against the land or of the claim of the state on the date of the quitclaim deed or other conveyance together with interest thereon at the rate of six per centum (6%) per annum up to the date of such repurchase, and if such ten per centum (10%) does not leave a balance which is an even multiple of

twenty-five dollars (\$25) then the purchaser shall pay such additional amount as will reduce the balance to an even multiple of twenty-five dollars (\$25); the balance of the repurchase sum shall draw interest at the rate of five per centum (5%) per annum payable annually and shall be payable on the amortization plan as defined in this act during a period of thirty-three (33) years. Such repurchase contract shall be in such form and shall contain such reservations and conditions as the state board of land commissioners may prescribe not inconsistent with law and shall be subject to the same provisions with regard to liens on crops on the land under the contract as is provided in this act in the case of former mortgages converted into amortization mortgages.

En. Sec. 110, Ch. 60, L. 1927.

1805.111. County commissioners to release certain liens. The board of county commissioners of the several counties of the state are hereby empowered and directed to release and satisfy of record any seed loan mortgage, drought relief lien, or other similar instrument appearing on the county records as a second mortgage or lien against any lands on which the state holds a first mortgage whenever the attorney general shall request such cloud on the state's title to be removed and canceled.

En. Sec. 111, Ch. 60, L. 1927.

1805.112. County attorneys to represent the state. When so requested by the attorney general, the county attorney of each county in the state shall represent the state in all foreclosure proceedings, collections of delinquent rentals, actions for trespass on state lands and in all other state land matters that may arise in his county. The county attorneys shall not be entitled to charge the state any compensation for such services beyond their regular salaries.

En. Sec. 112, Ch. 60, L. 1927.

(l) Miscellaneous Provisions.

1805.113. Acceptance of federal land grants. The federal land grants made to the state of Montana through the so-called enabling act having already been accepted as a whole through the adoption of the state constitution and specifically by subdivision 7 of Ordinance No. 1 thereof, the state board of land commissioners is hereby authorized to accept any grant of lands from the United States to the state of Montana hereafter made in carrying out the provisions of the enabling act and also any other grant for any special purpose that may be made by the United States to the state of Montana. Any acceptance by the state board of land commissioners on behalf of the state of Montana, that has taken place prior to this act, of lands granted by the United States to the state of Montana is hereby ratified, confirmed and approved.

En. Sec. 113, Ch. 60, L. 1927.

1805.114. Gifts, donations, grants, legacies and devises to the state. The state board of land commissioners is hereby authorized and em-

powered to accept on behalf of the state from any natural person gifts, donations, grants, legacies and devises having a value of not less than two hundred fifty dollars (\$250) from each person for any purpose authorized by article XXI of the constitution. All lands passing to the state under these provisions or through the operation of law, shall be managed as other state lands and the rents and earnings shall be applied in accordance with the object and purpose specified by the grantor, subject to all constitutional limitations. All money realized from the sale of such lands and from other property and all gifts, donations, grants, legacies, and devises made in money, or the equivalent of money, shall be administered by the board for the benefit of the specific purposes designated by the person from whom they were received as provided by article XXI of the constitution and as further regulated by this act. The provisions of this section shall apply to gifts, donations, grants, legacies and devises already made to the state and now under the administration of the board if not contrary to any specific provisions made therein by the persons from whom they were received.

En. Sec. 114, Ch. 60, L. 1927.

1805.115. Board authorized to correct errors. The state board of land commissioners is hereby authorized, empowered and directed to cause to be corrected any and all errors, mistakes, and misdescriptions in any and all deeds and conveyances of property to the state of Montana; and in order to carry into effect the provisions hereof all deeds or such other conveyances as may be necessary shall be made and executed in the manner provided for the execution of patents by the state. The said board is also authorized and empowered to cause to be corrected any error or errors in leases, certificates of purchase, patents and other conveyances of property from the state upon satisfactory proof that an error or mistake has been made.

En. Sec. 115, Ch. 60, L. 1927.

1805.116. Money paid by mistake to be refunded. If any money has been erroneously paid or shall hereafter be erroneously paid to the state on any permit, lease, certificate of purchase, patent or loan or in any other transaction, it shall be the duty of the state board of land commissioners to cause such money erroneously paid to the state to be refunded to the person entitled thereto from the proper fund.

En. Sec. 116, Ch. 60, L. 1927.

1805.117. Who may not buy or lease state lands. It shall be unlawful for any member of the state board of land commissioners, or any person or persons appraising lands, or in the employ of the state for the selection, classification, appraisal, sale, or leasing of any state lands or the timber thereon, or of any person connected with the state land office as an officer or employee, to purchase or lease, directly or indirectly, any of the land of the state or any timber thereon.

En. Sec. 117, Ch. 60, L. 1927.

1805.118. Violations of this act classified. Any officer, employee or representative of the state of Montana who directly or indirectly accepts any money or any other valuable thing, except his regular and lawful compensation, for performing or not performing an official act under the provisions of this act, or for modifying the performance thereof shall be guilty of a felony; any officer, employee or representative of the state who knowingly and wilfully makes any false classification or appraisal of any state land, or of any land offered the state for sale or offered as security for a loan from the state, or who falsely classifies or scales any timber on state lands or from state lands, or any timber in which the state is interested, or who knowingly and wilfully makes any false report of any such classification or appraisal or scaling shall be guilty of a felony; any officer, employee or representative of the state who otherwise violates any of the provisions of this act and such violation results in a loss to the state of one thousand dollars (\$1,000), or more, shall be guilty of a felony; but if such violation results in a loss to the state of less than one thousand dollars (\$1,000) or in no pecuniary loss, then he shall be guilty of a misdemeanor.

En. Sec. 118, Ch. 60, L. 1927.

1805.119. Punishments. Any officer, employee or representative of the state who is found guilty of a felony as defined in the preceding section shall be punishable by imprisonment in the state penitentiary for not less than one (1), nor more than ten (10) years or with a fine which shall neither be less than five hundred dollars (\$500) nor less than twice the amount of the loss that resulted to the state through the crime of which he has been convicted, or by both such imprisonment and fine. Any officer, employee or representative of the state who is found guilty of a misdemeanor as defined in the preceding section shall be punishable by imprisonment in a county jail for not to exceed one (1) year or by a fine which shall neither be less than one hundred dollars (\$100) nor less than twice the amount of the loss that resulted to the state through the crime of which he has been convicted, or by both such imprisonment and fine.

En. Sec. 119, Ch. 60, L. 1927.

1805.120. Fees. The commissioner of state lands and investments is hereby authorized and empowered and it is hereby made his duty to charge and collect the following fees:

Issuing miner's prospecting permit—ten dollars (\$10) for each permit, or such greater fee as the board may fix in each case.

Issuing any other permit—one dollar (\$1).

Issuing any lease with or without bond—two dollars and fifty cents (\$2.50).

Issuing any certificate of purchase or lien certificate or converted certificate or purchase contract—five dollars (\$5).

Approving and entering assignment of lease or certificate of purchase—one dollar (\$1).

Deed for right of way easement or other easement—five dollars (\$5).

Patent to any land sold—five dollars (\$5).

Certified copy of any of the instruments above enumerated, one-half the fee required for issuing the original instrument.

Making township plats showing the state lands therein and giving other information, such fee as the board may fix to be graduated according to the amount of work required.

Certified copy of any other instrument than those above enumerated or of the records of his office shall be furnished at the rate of twenty cents (.20) per folio of one hundred (100) words and one dollar (\$1) for the certificate.

The board shall fix the fees to be charged and collected for specific services by the commissioner not enumerated in this section.

En. Sec. 120, Ch. 60, L. 1927.

1805.121. Heading, subtitles, and captions no part of the act. The headings and subtitles of the various divisions and subdivisions of this act and the captions of the various sections shall not be regarded as any portion of the act itself; they are used simply for the purpose of conveying a general idea of the subject matter appearing thereunder.

En. Sec. 121, Ch. 60, L. 1927.

1805.122. Findings of unconstitutionality—Effect of. If any subdivision, section or part of section of this act should be found to be unconstitutional by the supreme court of this state, such finding of unconstitutionality shall not affect the remainder of the act but such remainder shall remain in full force and effect and shall be carried out, and the state board of land commissioners is hereby specifically charged with the duty of bridging over as far as possible any gap which might result in case any portion or portions of this act should be found unconstitutional by exercising the general grant of powers given to it by the constitution of the state.

En. Sec. 122, Ch. 160, L. 1927.

1805.123. Repeal. Section 207, section 1805, sections 1809 to 1829, both inclusive, section 1840, sections 1843 to 1871, both inclusive; sections 1882 to section 1911, both inclusive; section 1918, all of these sections being of the Revised Codes of the state of Montana of 1921, and section 4014 of the Revised Codes of Montana of 1921, as amended by chapter 147 of the Laws of the Eighteenth Legislative Assembly; and chapter 94 of the Laws of the Eighteenth Legislative Assembly; and chapters 90, 134, 168 and 190 of the Nineteenth Legislative Assembly of the state of Montana, and all other acts and parts of acts in conflict with any of the provisions of this act are hereby repealed.

En. Sec. 123, Ch. 160, L. 1927.

1808.1. Acceptance congressional grants school sections. The state of Montana hereby accepts the grant of numbered school sections mineral in character as made by the act of congress entitled "An act confirming in states and territories title to lands granted by the United States in aid

of common or public schools," approved January 25, 1927, subject to the provisions and conditions of the said act.

En. Sec. 1, Ch. 66, L. 1927.

1809-1817, inclusive. Relating to state board of land commissioners.
Rep. Sec. 123, Ch. 60, L. 1927.

CHAPTER 142.

REGISTER AND DEPUTY REGISTER OF STATE LANDS.

1818-1823, inclusive. Relating to register of state lands.
Rep. Sec. 123, Ch. 60, L. 1927.

CHAPTER 143.

STATE LAND AGENT.

1824-1829, inclusive. Relating to state land agent.
Rep. Sec. 123, Ch. 60, L. 1927.

CHAPTER 144.

STATE FORESTS—ADMINISTRATION.

1830. State forestry.
Rep. Sec. 11, Ch. 179, L. 1925.

1830.1. **State forests—Establishment.** That all lands at present owned by the state of Montana, and all that may hereafter be acquired by the state through escheat, exchange, purchase, grant or devise, which are principally valuable for the timber that is on them, or for the growing of timber or for watershed protection, are hereby classified and designated "state forests," and reserved for forest production and watershed protection.

En. Sec. 1, Ch. 179, L. 1925.

1830.2. **Designation of certain state forests.** That the following state forest units are hereby established, primarily to secure through forestry management a continuous supply of timber and the permanence of watershed covers:

(a) A state forest containing lands owned or hereafter acquired by the state, now comprising about 90,000 acres, situated in the watersheds of the Stillwater and Whitefish rivers of Flathead and Lincoln counties, shall hereafter be known and designated as the "Stillwater state forest."

(b) A state forest containing all lands owned or hereafter acquired by the state, now comprising about 42,000 acres, situated in the Swan river watershed of Lake county, shall hereafter be known and designated as the "Swan river state forest."

(c) A state forest containing all lands owned or hereafter acquired by the state, now comprising about 20,000 acres, situated in the Coal Creek watershed of the North Fork of the Flathead river, shall hereafter be known and designated as the "Coal Creek state forest."

(d) A state forest containing all lands owned or hereafter acquired by the state, now comprising about 10,000 acres situated in the watersheds of Camp and Cameron creeks of Ross Hole of Ravalli county, shall hereafter be known and designated as the "Sulu state forest."

(e) A state forest containing all lands owned or hereafter acquired by the state, now comprising about 14,628 acres, situated in the west half of township 25 north, range 26 west; and township 23 north, range 27 west; and west half of township 22 north, range 26 west; and township 21 north, range 26 west, except sections 4, 5, 6, 7, 8 and 18, in the Thompson river watershed of Sanders county, shall hereafter be known and designated as the "Thompson river state forest."

(f) A state forest containing all lands owned or hereafter acquired by the state, now comprising about 18,076 acres, situated in townships 13, 14 and 15 north, range 14 west; and townships 13 and 16 north, range 15 west, Montana meridian, in the Clearwater river watershed of Missoula county, shall hereafter be known and designated as the "Clearwater state forest."

(g) A state forest containing all lands owned or hereafter acquired by the state, now comprising about 8,245 acres, situated in township 14 north, ranges 7, 8 and 9 west; and township 13 north, ranges 8 and 9 west, Montana meridian, of the Blackfoot river watershed in Lewis and Clark county, shall hereafter be known and designated as the "Lincoln state forest."

En. Sec. 2, Ch. 179, L. 1925.

1830.3. State forester—Appointment—Duties. That the governor by and with the advice and consent of the senate shall appoint a state forester to have general charge of all the state forests, who shall be an elector of the state of Montana, trained and experienced in forestry, whose salary shall be \$3,000 per annum, and actual, necessary expenses while engaged in outside work in connection with his office, payable monthly from the state's general fund, and whose term of office shall be for four years; with the consent and approval of the state board of land commissioners, the state forester shall appoint such office help, forest wardens, scalers, cruisers, estimators and forest assistants as may be necessary for the administration of the forests, and fix their salaries and expenses. He shall give a satisfactory bond to the state of Montana in the sum of ten thousand dollars (\$10,000), as guarantee for the faithful performance of his duties.

En. Sec. 3, Ch. 179, L. 1925.

1830.4. Regulation of sale of state timber. Under the direction of the state board of land commissioners, the state forester may sell the timber crop and other crops of the forests, after examination, estimate, appraisal and report, and under such rules and regulations as may be established by the state board of land commissioners; provided, that any timber proposed for sale in excess of 100,000 feet board measure shall be advertised in a paper of the county in which the timber is situated for a period of at least thirty days, during which time the state forester shall receive sealed bids up to the hour of the closing of the

bids, as specified in the notice of sale. Right is reserved to the state forester to reject any or all bids, upon approval by the board; or he shall award the sale to the highest responsible bidder. Upon award of sale the purchaser shall execute a formal agreement, approved by the state land board, which shall describe the area on which the timber is to be cut, the approximate quantity to be cut by species, the rate for each product of each species, and shall stipulate that all timber shall be paid for in advance of cutting, fix a date for termination of the agreement, and define rules of silviculture, cutting, utilization, scaling and slash disposal, and such other rules as in the discretion of the state board of land commissioners, are essential to the perpetuation of the state forests.

En. Sec. 4, Ch. 179, L. 1925.

1830.5. Bond. As a guarantee for the faithful performance of the agreement, the purchaser shall be required to furnish a bond, with sufficient sureties, to the state of Montana, in an amount equal to at least twenty per cent of the estimated value of timber sold.

En. Sec. 5, Ch. 179, L. 1925.

1830.6. Damages for breach of timber sale agreement. For breach of timber sale agreement, the state forester is authorized to suspend cutting or removal of the timber, if by him deemed necessary, and to take such steps as are advisable upon advice and counsel of the attorney general to adjust the breach or to liquidate the state's claim for damages or he may submit the case with full report as to damages sustained by the state to the attorney general for collection on the bond.

En. Sec. 6, Ch. 179, L. 1925.

1830.7. Regulation of permits. Permits may be issued free of charge for dead, down or inferior timber in such quantities and under such restrictions and regulations as the state land board may approve for fuel and domestic purposes to residents and settlers of the state.

Permits may be issued to citizens of the state for commercial purposes at commercial rates without advertising under such restrictions and rules as the state land board may approve for timber in quantities of less than 100,000 feet board measure; provided, repeated permits of this kind shall not be issued to avoid advertising and the consequent competition secured thereby.

Permits for cutting and removal of timber may be issued to farmers, ranchers and prospectors with such restrictions and regulations as the board may approve for timber in quantities of 25,000 feet board measure, or less, when it is to be used for domestic purposes in the repair and development of the ranch or farm; provided, that not to exceed 25,000 feet board measure shall be granted in any one year to any one person; and provided, that the rates of charge for such permits shall be fixed by the state land board.

En. Sec. 7, Ch. 179, L. 1925.

1830.8. Duties of state forester—scaling. It shall be the duty of the state forester to supervise all the state timber sales, to secure payment to the state treasurer for all the timber before it is cut, to secure the most complete utilization of all forest products consistent with the current lumbering practice. It shall be his duty to instruct and supervise the cruisers, forest wardens and scalers in the conduct of their work; and to fix and establish the standard practice in timber sales administration. He shall require that each merchantable log be scaled by the Scribner Decimal C. log rule inside the bark at the small end, and that the deduction be made for all visible cull. He shall fix and determine converting factors and units of measure for all forest products other than sawlogs, which shall be as nearly as practical equivalent to the Decimal C. log scale. He shall require that all merchantable logs sold be numbered consecutively on at least one end, and that the corresponding numbers and the scale therefor be entered in a scale book, which shall be retained as a permanent public record showing date of scale, the designation of the sale, and the name of the scaler or scalers who did the work. He shall also require that each merchantable sawlog, stull, tie, post, pole or other piece of timber be stamped on one or both ends with the official state timber mark, which is hereby authorized and designated thus, "S-T," signifying "state timber."

He shall require a permanent public record of scale or measurement of every log, piece or other unit of measurement of state timber products, except timber granted free to settlers for fuel and domestic purposes; and no state timber products shall pass from the title of the state until such scale or measurement has been made and recorded, and payment therefor secured to the state. He shall be responsible to the board for the administration of the forests, and for the examination, classification, selection, appraisalment and re-appraisalment of the state forest lands, and shall establish his office upon the state forests, or at some place of business accessible to them. He shall administer the grazing and all other secondary uses of the state forests.

He shall publish biennially a report of the condition and activities of the state forests.

En. Sec. 8, Ch. 179, L. 1925.

1830.9. Co-operation with land owners. The state forester is hereby authorized to co-operate with forest owners and farmers in the development and protection of state and privately owned forest lands, plantations and shelter belts and brush disposal areas within the state.

En. Sec. 9, Ch. 179, L. 1925.

1830.10. Receipt of money—Co-operative work fund. The state treasurer is hereby authorized to receive moneys that may be appropriated or allotted for the purposes named in section 9 of this act by the state, counties, municipalities, the United States government or any department thereof, or other organization or individual. The state treasurer shall deposit such moneys in a special fund to be known as the forester's co-operative work fund, and the state auditor is hereby directed to draw

his warrant or warrants for payments from said fund for the purposes aforesaid upon receipt of vouchers approved by the state forester.

En. Sec. 10, Ch. 179, L. 1925.

1832. Appointment, salary and bond of assistant state forester.

Rep. Sec. 11, Ch. 179, L. 1925.

1837. Expenses of state forester.

Rep. Sec. 11, Ch. 179, L. 1925.

CHAPTER 145.

CONTEST BOARD.

1840. Contest board.

Rep. Sec. 123, Ch. 60, L. 1927.

CHAPTER 147.

CLASSIFICATION AND SALE OF STATE LANDS AND EASEMENTS THEREIN.

1843 to 1871, inclusive. Relating to classification and sale of state lands.

Rep. Sec. 123, Ch. 60, L. 1927.

CHAPTER 148.

SALE OF TIMBER—LOG-MARKS.

1873 to 1878, inclusive. Relating to the cutting of state timber, permits, payment and log marks.

Rep. Sec. 11, Ch. 179, L. 1925.

CHAPTER 149.

LEASES AND RENTALS OF STATE LANDS.

1882. Board may lease.

Rep. Sec. 123, Ch. 60, L. 1927.

1882.1. State oil lands, how leased. The state board of land commissioners is hereby authorized and empowered to lease in such manner as it may determine, not inconsistent with the enabling act and the constitution, any state lands to which the title has vested in the state and in which the oil and gas rights are not reserved by the United States, for prospecting and exploring for oil and gas, mining, drilling, developing, and removing the same upon the terms and conditions herein prescribed, to any person, association, corporation, domestic or foreign, or municipality qualified under the constitution and the laws of the state of Montana. This power and authority to lease state lands for such purposes shall extend to and include all lands owned by the state under navigable lakes and streams, and shall also extend to and include all those state lands which have been sold but in which the oil and gas rights have been reserved by the state of Montana; but in such cases and in all cases where the lands are under lease for grazing, agriculture or

similar purposes, care shall be taken in issuing the oil and gas leases to protect the rights of the purchaser or lessee.

In every oil and gas lease granted pursuant to the terms hereof there shall be reserved unto the state of Montana the right to sell, lease, or otherwise dispose of the surface of the lands covered thereby, subject always to the rights and privileges granted unto the lessee under such oil and gas lease.

In the case of mortgage lands hereafter sold by the state in which the oil and gas rights belong to and are reserved by and for the state, when the state leases such lands for oil and gas purposes, the holder of such lands under certificate of purchase or other contract, or deed from the state, shall be allowed a royalty of one per centum (1%) of the oil and gas produced from such lands, to be calculated on the same basis as the royalty to be paid to the state as hereinafter provided and to be paid by the lessee directly to the person or persons entitled thereto, said one per centum (1%) royalty to be deducted from the royalty reserved to the state.

Oil and gas leases issued under the provisions of this act shall all be subject to the conditions that the lessee in conducting his explorations and mining or drilling operations shall use all reasonable precautions to prevent waste of oil or gas developed in the land or the entrance of water through wells drilled by him to the oil or gas sands or oil or gas bearing strata to the destruction or injury of the oil or gas deposits. Violations of any of these conditions shall constitute grounds for the forfeiture of the lease after hearing had thereon before the state board of land commissioners.

En. Sec. 1, Ch. 108, L. 1927.

1882.2. Limitation and regulation of oil leases. No person, association, corporation, or municipality shall acquire and at any one time hold, by original grant from the state, by assignment, or by operation of law, under the provisions of this act, in the aggregate, more than six hundred and forty (640) acres of land, or a section of land as defined by the public land survey of the United States containing approximately six hundred and forty (640) acres; provided, however, such maximum acreage may be so acquired and held under one or more oil and gas leases. Nothing herein contained shall be construed to prohibit the acquisition of any oil and gas lease by succession, will, judgment, decree, or otherwise by operation of law; provided, however, that any oil or gas lease so acquired by any person in excess of one section of land shall automatically terminate two years after its acquisition unless the same shall theretofore have been assigned to a qualified assignee. All leases issued hereunder shall be granted for a period not exceeding five (5) years and as long thereafter, during the term of fifteen (15) years commencing with the date of such lease or leases, as oil or gas of commercial quality and in commercial quantity shall be produced from the land covered thereby; provided, however, that all drilling, rental and other obligations are fully kept and performed by the lessee.

En. Sec. 2, Ch. 108, L. 1927.

1882.3. Rentals—Fees—New leases. The minimum annual money rentals to be paid to the state for oil and gas leases under the provisions of this act shall be seventy-five cents (75c) for each acre of land leased; provided, however, that such rental shall in no case be less than fifty dollars (\$50) per annum.

A filing fee of two dollars and fifty cents (\$2.50) for each oil and gas lease issued and a fee in the same amount for each assignment shall be paid to the register of state lands. Such filing fee and the first year's rental shall be paid before the issue of the lease. The rentals for each subsequent year of the lease shall be due and payable thirty (30) days before the beginning of such subsequent year.

The lands shall be leased in as compact bodies as the form and areas of the tracts held by the state and offered for lease will permit. No lease shall embrace noncontiguous subdivisions of lands unless such subdivisions shall be within an area comprising not more than one square mile.

In all cases where an oil and gas lease hereafter issued shall be surrendered for cancellation before its expiration, relinquished to the state, or canceled through proceedings on the part of the state, no new lease on the lands under such lease shall be issued within thirty (30) days from the date of cancellation or relinquishment. This restriction shall not apply however in case of bona fide assignment.

En. Sec. 3, Ch. 108, L. 1927.

1882.4. Royalties. In every oil and gas lease granted by the state there shall be reserved to the state as consideration therefor, in addition to the rentals as hereinbefore provided, a royalty in all oil and gas produced and saved from all lands covered thereby, and not used for light, fuel, and operation purposes on the leased premises, which shall be equivalent to the full market value, as ascertained by the state board of land commissioners at the date of such lease, of the estate or interest of the state in the lands and oil gas deposits disposed of under such lease; provided that such royalty reservation shall not be less than twelve and one-half per cent ($12\frac{1}{2}\%$) of the whole thereof. Such lease shall provide for the rendering of payment of such royalty in the following manner and upon the following terms:

The lessee shall pay to the state, in cash, for all oil and gas royalty reserved, and posted field price existing on the day such oil or gas is run into any pipe-line or storage tank to the credit of the lessee, plus any bonus actually paid, or agreed to be paid, to the lessee, for such oil or gas; or at the option of the state, exercised in writing by the state board of land commissioners not oftener than every thirty (30) days, the lessee shall deliver the state's royalty oil or gas free of cost or deductions, into the pipe-line to which the wells of the lessee may be connected or into any storage designated by the state and connected with such wells.

En. Sec. 4, Ch. 108, L. 1927.

1882.5. Reports by lessees. On or before the fifteenth day of each month every holder of an oil or gas lease shall make a report to the register of state lands for the preceding calendar month, which report

shall be in such form as the state board of land commissioners may prescribe. Such report shall show the amount of oil or gas produced and saved during such preceding month, the price obtained, the total amount of all sales, and such additional information as may be required and shall be verified by the affidavit of the lessee or some responsible person having knowledge of the facts, and shall be accompanied by payment of the amount due the state as royalty for the month covered by the report.

En. Sec. 5, Ch. 108, L. 1927.

1882.6. Leases may be canceled when. In each and every oil and gas lease granted by the state there shall be reserved unto the state board of land commissioners full power and authority to declare termination of the same upon failure of the lessee to drill at least one well upon the leased premises not less than six (6) inches in diameter to the depth of at least one thousand (1,000) feet, unless oil or gas in commercial quantity and of commercial quality shall be encountered at a shallower depth within two years after the date of the lease; provided further that if oil or gas in commercial quantities are not found at a depth of one thousand (1,000) feet or less, then in that event the lessee shall continue drilling with diligence to such depth as may be necessary to make a reasonable test for oil or gas. The board may, in its discretion, upon satisfactory showing by the lessee, extend the time for commencement or completion of such drilling obligation from year to year not exceeding five (5) years from and after date of lease upon such terms and considerations as the board may determine, and upon the payment to the register of state lands of a penalty of one dollar (\$1) per acre per year for each year beginning with the third year, payable each year in advance.

En. Sec. 6, Ch. 108, L. 1927.

1882.7. Authority of board. The board shall have the power and authority to prescribe such rules and regulations and to do and perform all acts and things not inconsistent with the enabling act, the constitution, and the statutes of this state as it may deem necessary and proper relating to the leasing of state lands for oil and gas exploration and development.

En. Sec. 7, Ch. 108, L. 1927.

1882.8. Rights of present lease holders. Any holder of an existing oil and gas lease heretofore issued shall have the right to exchange such lease for an amended lease issued under the provisions of this act and embracing the same land. When the holder of any such lease makes written application to the board in due form for such exchange, the board shall issue an amended lease, embracing the same land as the former lease, in the ordinary and regular form duly adopted by the board under the provisions of this act subject to the same royalty reservations unto the state; but there shall be deducted from the term for which such amended lease may be issued, the time that has passed from the date of the issue of the former lease to the date of the issue of the amended lease, and the lessee shall be credited on the amended lease with

development work performed on the leased premises under the former lease.

All existing oil and gas leases heretofore executed by the register of state lands on behalf of the state of Montana are hereby ratified, confirmed, and approved, provided, that the holder of any such lease shall, within ninety (90) days from the date this act goes into effect, file in the office of the register of state lands consent in writing to the amendment of such lease to contain a reservation to the state of the right at all times to take and receive its royalties in money or kind in accordance with the provisions of section 4 of this act, and failure or refusal of the holder of any such lease to file such consent within such time shall automatically deprive such lessee of all of the benefits conferred by this act.

En. Sec. 8, Ch. 108, L. 1927.

1882.9. Bonds. The state board of land commissioners shall require lessees of oil and gas leases and assigns thereof to furnish bonds to the state in form and substance prescribed by law or by regulations of the board and in amount, or amounts, adequate to indemnify the state against loss, damage or detriment by reason of failure of the lessee to fully discharge the obligations contained in any lease or assignment thereof, including the payment of any money penalties fixed by the board; provided, that no bond in excess of twenty thousand dollars (\$20,000) shall be required under any one lease for any one year.

En. Sec. 9, Ch. 108, L. 1927.

1882.10. Forfeiture of leases—Hearings. All oil and gas leases granted by the state pursuant to the terms of this act shall provide for forfeiture and cancellation thereof upon failure of the lessee to fully discharge the obligations provided therein, after written notice from the state and reasonable time allowed to the lessee for performance of any undertaking or obligation specified in such notice concerning which the lessee is in default. The state board of land commissioners is hereby granted full power and authority to order and hold hearings on any matter or question involving oil and gas leases, under such rules and regulations as it may adopt; and any lessee, upon application therefor, shall be granted a hearing on any notice or demand of the said board before any lease is declared forfeited or canceled by the board.

En. Sec. 10, Ch. 108, L. 1927.

1882.11. Drilling conditions. The lessee shall be required, upon completing a commercially productive oil or gas well upon the leased premises, to proceed with reasonable diligence to drill such additional wells to the depth of the formation found commercially productive or to such depth as may be necessary to economically test, develop and operate the deposits discovered. No lessee shall, however, be required to drill to completion more than one well under any one lease during any one calendar year, or a total number of wells under any one lease in excess of the total number of forty (40) acre subdivisions of land held under such lease; and, as to lands found valuable for gas production only,

the drilling obligation of the lessee shall be confined to a total number of wells equal to the total number of tracts comprising one hundred and sixty (160) acres of land included in the lease; except, as the drilling of offset oil or gas wells necessary to protect the leased premises and deposits from loss or depletion due to wells drilled on contiguous lands shall require greater diligence in drilling and a greater number of wells to be drilled; provided, that the performance of said well drilling operations may be suspended only by and with the consent of the state board of land commissioners during the time oil or gas previously discovered cannot be marketed at a profit or for other good cause shown.

En. Sec. 11, Ch. 108, L. 1927.

1882.12. Royalties—Payment and disposal. All fees, rentals, penalties, royalties and bonuses collected for or under such leases shall be paid to the register of state lands and by him credited as follows: All fees and penalties shall be credited to the state general fund; all rentals shall be credited to the income fund of the grant to which the lands under each lease belong; all moneys collected as royalties and bonuses shall be credited to the permanent fund arising from the grant to which the land under each particular lease belongs and become and forever remain an inseparable and inviolable part thereof; provided, however, that all royalties and bonuses collected from the lands forming part of the capitol building grant shall be available as income the same as all other receipts from such lands; and provided further that all moneys received as rentals, royalties and bonuses for or under leases on lands owned by the state of Montana and not held in trust for the public schools of the state or for any state institution shall be credited, one-half to the state general fund and one-half to the state permanent revenue fund as defined by article XXI of the constitution.

En. Sec. 12, Ch. 108, L. 1927.

1882.13. Approval of amendatory enabling act. The state of Montana, for the purpose of enabling it to take advantage of the powers to it granted by the United States, mentioned in an act of the 67th congress, No. 48, entitled: "An act to amend an act approved February 22, 1889, entitled 'An act to provide for the division of Dakota into two states and to enable the people of North Dakota, South Dakota, Montana and Washington to form constitutions and state governments, and to be admitted into the Union on an equal footing with the original states, and to make donations of public lands to such state,' " approved August 11th, 1921, hereby accepts said powers as of said date of approval of said amendatory act.

En. Sec. 13, Ch. 108, L. 1927.

1882.14. Correction of errors. The state board of land commissioners is hereby authorized to correct errors of any kind in leases, conveyances or other instruments in writing issued pursuant to the terms hereof and to cause any and all moneys erroneously paid to the state under oil and gas leases, applications therefor, or lands and the products

thereof covered thereby, to be refunded to the person or persons entitled thereto from the proper fund.

En. Sec. 14, Ch. 108, L. 1927.

1882.15. Re-leasing—Advertising. The board at the expiration of any lease granted under the terms of this act is authorized to advertise the land held thereunder for re-leasing and to lease the same to the highest responsible bidder therefor at public auction; provided, however, that any person, association, firm or corporation who held such lease at the expiration thereof on any such land shall have the privilege of re-leasing the same at such highest responsible bid offered therefor, upon such terms and conditions as may be prescribed by the said board or by the legislative assembly; and the board shall have the privilege of rejecting any and all bids.

En. Sec. 15, Ch. 108, L. 1927.

1882.16. Assignments. The assignment of any oil and gas lease issued under the provisions of this act, either in whole or as to subdivisions of land embracing not less than forty acres covered thereby, made to an assignee qualified as provided herein, shall be permitted. Such assignment shall not, however, be binding upon the state until filed in the office of the register of state lands accompanied by the required fees and bond, together with such proof of qualifications as may be required by the state board of land commissioners, and approved by said board or its lawful representative; provided, that the approval of any such assignment so filed and supported shall not be withheld in any case where the rights or interest of the state in the property assigned will not in the judgment of the board be prejudiced thereby, and the decision of the board in all cases to be subject to appeal upon proper court proceedings. All other assignments of oil and gas leases issued under the provisions of this act or interests therein shall be subject to approval by the state board of land commissioners and shall be binding upon the state in the discretion of said board.

En. Sec. 16, Ch. 108, L. 1927.

1882.17. Disposal of improvements on termination of lease. Upon the termination for any cause, of any lease issued pursuant to this act, the former lessee shall have six (6) months after the date of said termination within which to remove all machinery, fixtures, improvements, buildings and equipment belonging to him, upon said premises, except casing in the wells and other equipment or apparatus necessary for the preservation of any oil or gas well or wells; provided, however, that as to such casing, equipment and apparatus, any succeeding lessee, or in the event there be no succeeding lessee, the state of Montana, wishing to have such property left upon the premises, shall pay the reasonable value thereof, in cash, to the former lessee, but if the succeeding lessee or the state of Montana acting through its board of state land commissioners, is unable to agree with the former lessee upon the reasonable cash value of such casing, equipment and apparatus, then the succeeding lessee or the state of Montana, as the case may be, shall pay, in cash to the former

lessee therefor, such sum as may be fixed as a reasonable price by a board of three appraisers, one of whom shall be chosen by the successful bidder, one by the former lessee and the third by the two so chosen, and whose appraisal shall be reported to the respective parties, in writing, and thereupon be final and conclusive. The former lessee may remain in possession and manage the land and property formerly covered by his lease until the value of said casing, equipment and apparatus which such succeeding lessee or the state of Montana itself, desire to have left upon said premises, is fixed, in the manner hereinbefore provided, and shall have been paid to him, in cash, and during such time as such former lessee remains in such possession, he shall be entitled to retain the same share of the products of the premises as inured to him during the term of his lease. Should the state of Montana or other bidder, not desire any of lessee's property, as provided in this paragraph, the lessee shall properly plug all wells and remove all of said property from said lands.

En. Sec. 17, Ch. 108, L. 1927.

1882.18. Termination by lessee. The lessee under any oil and gas lease granted by the state shall have the right at the termination of any rental year by giving to the register of state lands thirty days' previous notice in writing, of such intended surrender, to surrender and relinquish such lease to the state in whole or as to any legal subdivision of the lands covered thereby and be thereupon discharged from any obligation not theretofore accrued as to lands so surrendered and relinquished, without prejudice to the continuance of the lease as to lands not surrendered or relinquished. Any lessee holding any oil and gas lease or leases issued prior to the passage of this act shall have the right to surrender any such lease and to accompany any such surrender with an application for a new lease or leases upon all or any portion of the land so surrendered; and, thereupon such application shall have preference over all other applications submitted for the same lands and a lease or leases upon the lands described in such application shall, subject to the terms of this act, be forthwith granted to such former lessee, upon compliance by the lessee with the requirements hereof and the regulations promulgated by the state board of land commissioners.

En. Sec. 18, Ch. 108, L. 1927.

1882.19. Offset wells—Reports. Oil and gas leases granted by the state shall contain suitable provisions imposing upon all lessees the obligation to drill offset wells wherever and whenever necessary to prevent waste and damage to the property of the state; also to make such report of operation, production and sales, as well as payments due the state, in the manner, at the time and to such representative of the state as may be required by the state board of land commissioners.

En. Sec. 19, Ch. 108, L. 1927.

1882.20. Interest by board or employees forbidden. It shall be unlawful for any member of the state board of land commissioners or any person or persons employed by the state for selecting, classifying, appraising, selling or leasing any state land or interest therein, or any officer

or employee of the state land officer to hereafter purchase or lease, directly or indirectly, or acquire any interest in any lands or oil and gas deposits under the provisions of this act.

En. Sec. 20, Ch. 108, L. 1927.

1882.21. Penalty. Any officer, employee or representative of the state of Montana, who directly or indirectly accepts any money or any other valuable thing, except his regular and lawful compensation, for performing, or not performing an official act under the provisions of this act, or for modifying the performance thereof, shall be guilty of a felony. Any officer, employee, or representative of the state who knowingly and wilfully makes any false classification or appraisal of any state land or interest of the state therein, or of any oil or gas deposits in which the state is interested, or who knowingly and wilfully makes any false report of any such classification or appraisal, shall be guilty of a felony.

En. Sec. 21, Ch. 108, L. 1927.

1882.22. Penalty for false statements. Any person who shall knowingly make and file in any department, bureau or office of the state of Montana any application, statement, or report in writing required by regulation promulgated pursuant to the provisions of this act containing any false statement of a material fact, shall be guilty of a felony.

En. Sec. 22, Ch. 108, L. 1927.

1882.23. Effect partial invalidity act. If any subdivision, section or part of section of this act shall be found to be unconstitutional, such finding of unconstitutionality shall not affect the remainder of this act, but such remainder shall be in full force and effect and shall be carried out and the state board of land commissioners is hereby specifically charged with the duty of exercising to their full extent the general grant of powers given to it by the constitution of the state in order to accomplish that purpose.

En. Sec. 23, Ch. 108, L. 1927.

1882.24. Repealing clause. All acts and parts of acts in conflict with any of the provisions of this act are hereby repealed. Provided, however, that nothing herein contained shall be construed to repeal any of the provisions of chapter fifty-six of the Session Laws of 1925, or to derogate any of the powers therein granted to, or the duties therein prescribed for, the board of railroad commissioners of the state of Montana.

En. Sec. 24, Ch. 108, L. 1927.

1882-1904, inclusive. Relating to leases and rentals of state lands.
Rep. Sec. 123, Ch. 60, L. 1927.

1886. Leases conditioned on payment of rental in advance.
Rep. Sec. 4, Ch. 134, L. 1925.

1904. Holding over and trespass. All corporations, companies or persons who shall use or occupy state lands for farming, grazing or other-

wise, contrary to the provisions of the lease, or without first having paid the register of state lands the rental price for such privilege, or who shall so use or occupy said lands for more than thirty days after the cancellation or expiration of a lease, except by authority of the state land board, shall be regarded as a trespasser, and shall be required to pay to the register of state lands, double rental for the time so used or occupied, which shall be computed for not less than one year, and the state land agent or any deputy state land agent is hereby authorized and empowered, and it shall be his duty to collect such double rental for the full time of such trespass, by the seizure and sale of any crop growing upon state lands or by the seizure and sale of any livestock found illegally grazing upon state lands, and livestock found within an enclosure upon state land shall be prima facie evidence of such trespass. Provided, that for purpose of enforcing this act the state land agent or his deputy is hereby given authority as a state officer to proceed as required by law, in the foreclosure of chattel mortgages, and any corporation, company or person who shall construct a reservoir, ditch, railroad, public highway, private road, pipe-line, telegraph or telephone line or in any manner occupy or enter upon the lands belonging to the state without first having secured the authority and permission of the state board of land commissioners to so occupy said land, for such purposes, shall be regarded as a trespasser and upon conviction thereof shall be fined in the sum of not less than twenty-five dollars and not more than fifty dollars, for each offense, and each day shall constitute a separate offense.

Amd. Sec. 1, Ch. 189, L. 1925.

NOTE.—Section 123 of Chapter 60, L. 1927, expressly repeals section 1904 of the Revised Codes of 1921. It does not, however, mention Chapter 189, L. 1925. In view of the doubt as to whether the act of 1927 effects a repeal of the act of 1925, the above section is included in this supplement.

CHAPTER 150.

LOCATION OF MINING CLAIMS ON STATE LANDS.

1905, 1906, inclusive. Relating to mining claims on state lands.

Rep. Sec. 123, Ch. 60, L. 1927.

CHAPTER 151.

LIEU TIMBER LANDS.

1907, 1908, inclusive. Relating to lieu lands.

Rep. Sec. 123, Ch. 60, L. 1927.

CHAPTER 152.

FINANCE—GENERAL PROVISIONS REGARDING.

1909–1911, inclusive. Relating to state finance.

Rep. Sec. 123, Ch. 60, L. 1927.

1912. State's preference right to purchase general fund warrants.
The state of Montana does hereby reserve to itself a preference right,

prior to the right of any person, company or corporation to purchase state general fund warrants hereafter issued with funds under the control of the state board of land commissioners and subject to investment.

Whenever the state board of land commissioners has under its control any funds subject to investment which in its judgment it would be advantageous to have invested in state general fund warrants, and there are not sufficient funds in the state general fund to pay warrants issued against such fund at the time the same are issued and presented for payment, it shall authorize and direct the state treasurer to purchase state general fund warrants, designating the fund or funds to be so invested and fixing the amount or amounts. It shall also give notice to the state auditor of the investment to be made by the treasurer, designating the fund or funds to be invested and the amount or amounts. The auditor shall thereupon cause to be attached to, or stamped, written, or printed upon each general fund warrant thereafter issued, until warrants totaling the amount or amounts so designated have been issued, a notice to the effect that the state will exercise its preference right to purchase such warrant. The state treasurer shall thereafter when such warrant is presented to him, pay the same out of the proper fund as designated by the board and the warrant so purchased shall be registered as other state warrants and bear interest as provided by law.

When the designated amounts have been invested, the state treasurer shall notify the secretary of the state board of land commissioners, who shall thereupon issue orders upon the proper funds addressed to the state auditor for warrants to be issued in favor of the treasurer.

Amd. Sec. 1, Ch. 15, L. 1927.

1916. Land board to permit redemption of bonds. The state board of land commissioners shall permit any county, school district, city, or town to redeem one or more of its bonds at the expiration of any interest period, before the maturity of such bonds, upon giving to the state board of land commissioners, thirty days' notice of its intention to redeem and pay such bonds, and upon payment thereof as herein provided, such bonds shall be delivered to such county, school district, city, or town for cancellation; provided, that this section shall not be construed to permit the issuance of refunding bonds by any county, school district, city, or town for the purpose of redeeming, before maturity, any bond or bonds owned by the state, nor to grant the right to pay, before maturity, any bond or bonds owned by the state out of the proceeds of any refunding bond issue.

Amd. Sec. 1, Ch. 70, L. 1925.

1918. Expenses of administering state lands, how paid.

Rep. Sec. 123, Ch. 60, L. 1927.

CHAPTER 154.

INVESTMENT OF SCHOOL FUNDS—FARM LOANS.

1928A. Permanent common school and other educational funds, how invested—Amortization bonds. All moneys belonging to the perma-

ment common school fund and to the other permanent state educational, charitable and penal institution funds must be safely invested by the state board of land commissioners in bonds of school districts within the state of Montana; in bonds of the state of Montana or of the United States, in interest bearing warrants upon the general fund of the state; in any state capitol building bonds of the state of Montana, now issued or which may hereafter be issued; in first mortgages on good improved farm lands in the state of Montana free from all prior liens and encumbrances; in bonds issued by federal farm loan banks, or in bonds of the several counties and cities of the state of Montana in the manner prescribed by law; provided, however, that all farm mortgages in which such investments are hereafter made, and all bonds issued in this state in which such investments are hereafter made, must be issued and payable on the amortization plan. The amortization plan is hereby defined, when applied to these investments and to state land contracts or certificates, as being that plan under which part of the principal is required to be paid each time interest becomes due and payable, and under which this part payment on the principal increases at each succeeding installment in the same amount that the interest payment decreases so that the combined amount due on principal and interest on each due date remains the same until the loan or bond is paid in full. Whenever these installments are payable annually, the due date shall be December 15th; when the installments are payable semi-annually the due dates shall be June 15th and December 15th. Provided, however, that in case there are not sufficient amortization bonds available to keep the permanent school and institution funds of the state invested, then, in such case, these funds may be invested in other forms of bonds.

En. Sec. 1, Ch. 6, L. 1923.

1928B. Conversion of existing mortgages—Limit of loans. All bonds in which such permanent common school funds and the other permanent funds of the state are invested when this act becomes effective, whether such bonds are due or not, may be converted into amortization bonds running for a period of time not exceeding twenty (20) years whenever the board or officers invested with the power to issue or reissue such bonds have been duly authorized to issue amortization bonds and the state land board deems such change safe and advantageous to the state. The interest on these amortization bonds shall be fixed at such reasonable rate as the bond market may from time to time demand or justify and the state board of land commissioners determine.

En. Sec. 1, Ch. 6, L. 1923.

1930. Application for loans—Approval and rejection. All applications for loans of permanent common school or other permanent state educational, charitable, or penal institutional funds, to be secured by mortgage on farm lands, shall be made to the register of state lands as secretary of the state board of land commissioners and shall be made on forms approved by the attorney general. It shall be the duty of the state board of land commissioners to fill such applications for loans on farm lands as rapidly as such funds are available and in the order in

which the abstracts of title submitted in connection with such applications are finally completed and approved by the attorney general, provided, however, that the applicant must be an actual farmer and that in passing on loan applications the state board of land commissioners shall satisfy itself both in regard to the amplexness of the security and as to the character and earning capacity of the applicant. It shall reject any and all applications for loans that it may regard as unsafe or undesirable.

Amd. Sec. 2, Ch. 6, L. 1923.

1932A. Mortgages—Plan—Expiration — Term — Interest. All mortgages in which such funds are invested shall be in the name of the state of Montana as mortgagee; shall be payable on the amortization plan during a period of not more than thirty-five (35) years, and shall draw interest at the rate of six (6) per centum per annum; installments of principal and interest to be paid annually or semi-annually. Any loan may be paid in full before maturity, but if paid before the expiration of five (5) years from the date of the loan, a fee equal to one (1%) per cent of the original amount shall be required and paid before the mortgage is satisfied. If prepayment in full is made between five (5) and ten (10) years from the date of the loan, a fee equal to one-half ($\frac{1}{2}$) of one (1) per cent of the original loan shall be required. All payments shall be made to the register of state lands.

Amd. Sec. 3, Ch. 6, L. 1923.

1932B. Conversion of mortgages—Limit of loan—Costs. All farm mortgages in which such funds are invested when this amendment becomes effective may be converted into amortization mortgages conforming to the requirements of section 1932A and other legal requirements, upon application by the mortgagor or his successor in interest, whenever the state board of land commissioners deems such change safe and advantageous to the state. Provided, however, that no loan shall be made for more than forty (40) per cent of the actual value of the land. The state land board may in its discretion include in the principal of the new loan delinquent interest and other liens and charges against the land covered by the mortgage, whenever such action is deemed to be for the best interest of the state. There shall be charged for converting the old farm mortgages into amortization mortgages the reasonable cost of such work to the state to be fixed by the state board of land commissioners.

Amd. Sec. 3, Ch. 6, L. 1923.

Ref. to 1927, p. 214. CHAPTER 157.

DEFINITIONS.

1996. Definition of terms.

The state may tax a resident upon his stocks in foreign corporations which have no situs other than the domicile of the owner. State ex rel. Rankin v. Harrington, 68 Mont. 1, 217 Pac. 681.

Cited in State v. Rarey, 72 Mont. 270, 279, 233 Pac. 615; State ex rel. Northern Pacific Ry. Co. v. Duncan, 68 Mont. 420, 425, 219 Pac. 638.

Sections 1996, 1997 were cited in State ex rel. Rankin v. Harrington, 68 Mont. 1, 16, 17, 217 Pac. 681.

For text treatment of this subject see vol. 24 Cal. Jur. 19.

CHAPTER 158.

PROPERTY SUBJECT TO TAXATION.

1997. Property subject to taxation.

Shares of stock in foreign corporations owned by a legal resident of the state, who, however, for all intents and purposes, had left Montana and was doing business as a stock broker in the city of New York, which shares had never been within the state but were held and had their business situs in the state of New York, were not subject to taxa-

tion within this state. State ex rel. Rankin v. Harrington, 68 Mont. 1, 217 Pac. 681.

Cited in East Helena State Bank v. Rogers, 73 Mont. 210, 212, 236 Pac. 1090.

For text treatment of this subject see vol. 24 Cal. Jur. 71.

1998. Exemptions from taxation.

Cited in Commercial Nat. Bank of Miles City v. Custer County, 76 Mont. 45, 51, 245 Pac. 259; East Helena State Bank v. Rogers, 73 Mont. 210, 218, 236 Pac. 1090.

For text treatment of this subject see vol. 24 Cal. Jur. 87.

CHAPTER 159.

CLASSIFICATION OF TAXABLE PROPERTY.

1999. Classification of property for taxation.

Under the rule that in determining the class into which property falls within the Classification Act the use to which the property is devoted and its productivity is the criterion, the use to which machinery, though usable for manufacturing purposes, is actually put is the controlling factor. Chicago etc. Ry. Co. v. Powell County, 76 Mont. 596, 247 Pac. 1096.

Machinery and electric appliances located in a substation and used by a railway company in the transformation of electric current employed in the propulsion of its trains, an engine, pumps and pipes used for the pumping of water for use in the substation, shop machinery and movable shop tools used for repairing equipment, properly fall within class 2 of sections 1999 and 2000, and within the designation "implements and machinery" and are therefore assessable at twenty per cent of their true value, and not within class 4, "manufacturing and mining machinery" assessable at thirty per cent of their value. Chicago etc. Ry. Co. v. Powell County, 76 Mont. 596, 247 Pac. 1096.

Where money invested by individual citizens in bonds, notes or other evidences of indebtedness is not employed in competition with the business conducted by national banking corporations, it does not constitute "moneyed capital" within the meaning of section 5219, United States

Revised Statutes, and the state properly could, as it did by section 1999, tax shares of stock in a national bank at a higher rate (but on the same basis on which shares in state banking corporations are assessed) than moneys loaned by individuals upon promissory notes secured by mortgages, or loans made by a building and loan association or by a real estate and investment business, and its action in that regard is not open to the charge that it thereby unlawfully discriminated against national banks as such in contravention of the provisions of section 5219. Commercial Nat. Bank of Miles City v. Custer County, 76 Mont. 45, 245 Pac. 259.

A tax upon the moneyed capital of a state bank imposed under the Classification Act is a property tax and not an occupation or franchise tax. East Helena State Bank v. Rogers, 73 Mont. 210, 236 Pac. 1090.

The "moneyed capital" of a state bank for purposes of taxation must, under this section, be ascertained by deducting from the moneys and credits of the bank the amount of deposits and any money borrowed for use in the conduct of its business. East Helena State Bank v. Rogers, 73 Mont. 210, 236 Pac. 1090.

Coal lands purchased from the federal government must be taxed under section 3, article XII of the constitution at the price paid therefor, and not at thirty

per cent of such purchase price, the rate at which real property is taxable under the classification act. *State ex rel. Hinz v. Moody*, 71 Mont. 473, 230 Pac. 575.

Improvements on a railroad right of way for purposes of taxation fall within class 4 of this section, providing for taxation of all land, with improvements thereon, and therefore are assessable at thirty per cent of their true and full value under section 2000, and not within class 7, embracing all property not included in the preceding six classes, and assessable at forty per cent of their true value. *State ex rel. Northern Pacific Ry. Co. v. Duncan*, 68 Mont. 420, 219 Pac. 638.

Section 5194 provides that towns may levy taxes for general municipal purposes, not to exceed ten mills on the assessed value of their taxable property. Under sections 1999, 2000 the "taxable value" of property of different classes is fixed at a certain percentage of the assessable value, that of real property being fixed at thirty per cent of its assessed value. Defendant town assumed to levy a tax of twenty mills, contending that on the value as fixed by section 2000 the tax so imposed did not exceed ten mills on the assessed value as fixed by section 5194. Held, in an action to recover taxes paid on real property under protest, that section 5194 and sections 1999, 2000, being in irreconcilable conflict, and sec-

tions 1999, 2000 being the later enactment, are controlling to the extent of the repugnancy, that the taxable value as fixed by said sections, and not the assessed value fixed by section 5194, is the standard prescribed for computing taxes, and that therefore the tax in excess of ten mills on the dollar of taxable value was invalid. *Wibaux Improvement Co. v. Breitenfeldt*, 67 Mont. 206, 215 Pac. 222.

In an action to recover taxes paid under protest, held, under the above rules, that the term "supplies" used in this section, in declaring that machinery, fixtures and "supplies" shall fall under class 4 of the property designated therein for taxation purposes, was employed in its ordinary sense, and that railroad ties kept on hand for replacement or new construction fall fairly within its meaning, and were therefore unlawfully assessed under class 7 of the section, comprising all property not included in the six preceding classes, and taxable at a higher rate than that enumerated in class 4. *Northern Pacific Ry. Co. v. Sanders County*, 66 Mont. 608, 214 Pac. 596.

Cited with section 2000 in *Heckman v. Custer County et al.*, 70 Mont. 84, 223 Pac. 916; *First Nat. Bank v. County of Dawson*, 66 Mont. 321, 334, 213 Pac. 1097.

For text treatment of this subject see vol. 24 Cal. Jur. 130.

2000. Basis for imposition of taxes.

In an action brought by a national bank to recover taxes paid under protest, on the ground of an alleged illegal discrimination against it in favor of building and loan associations by reason of the difference in classification imposed by this section, it was decided that the contention was without merit, the court holding that building and loan associations are not banking institutions, that the record did not show that the moneyed capital of the association was employed in competition with the bank, and that the state may, if it desires, favor building and loan associations in the matter of taxation without such action being deemed an unfriendly discrimination against national banks. *First Nat. Bank*

v. County of Dawson, 66 Mont. 321, 213 Pac. 1097.

Applied with section 1999 in *Chicago etc. Ry. Co. v. Powell County*, 76 Mont. 596, 247 Pac. 1096.

Cited in *Commercial Nat. Bank of Miles City v. Custer County*, 76 Mont. 45, 54, 245 Pac. 259; *Heckman v. Custer County et al.*, 70 Mont. 84, 223 Pac. 916; *East Helena State Bank v. Rogers*, 73 Mont. 210, 236 Pac. 1090; *Butte Electric Ry. Co. v. McIntyre*, 71 Mont. 21, 24, 227 Pac. 61; *Wibaux Improvement Co. v. Breitenfeldt*, 67 Mont. 206, 210, 215 Pac. 222; *Northern Pacific Ry. Co. v. Sanders County*, 66 Mont. 608, 610, 214 Pac. 596.

2000.1. Taxable value, how ascertained. Wherever, by statute, rule, or law, it is or shall be provided that any tax shall or may be levied to the extent of a given number of mills on the property, within any county, or tax district or unit, or on the dollar, or on the value of such property, or on the taxable value or assessed value thereof, or similar expressions, or wherever it is or shall be provided, as aforesaid, that a tax may be levied not exceeding a given number of mills levied as aforesaid, or not exceeding a given percentage of the value, or taxable value, or assessed

value of property, or similar expressions, the said expressions shall be taken to mean the value of the taxable property in such county, tax district, or tax unit, as ascertained or determined by taking a percentage of the true and full value, provided, or to be provided, by law, rule, or practice, for the purposes of taxation, unless a meaning otherwise expressly and clearly appears to the contrary.

En. Sec. 1, Ch. 158, L. 1923.

2000.2. Determination percentage basis taxable value. The percentage basis of true and full value as provided for in section 2000, Revised Codes of Montana of 1921, shall be determined and assigned by the county assessors of the various counties of the state of Montana, when they make their annual assessments, and copies of such assessments as provided for in section 2005, Revised Codes of Montana of 1921, shall show the taxpayer the percentage class to which the assessor has assigned his various classes of property for taxation.

En. Sec. 1, Ch. 61, L. 1925.

2000.3. Taxpayer may appeal. If any taxpayer shall feel aggrieved at the percentage assignment so made by the county assessor, he shall have the right to appeal to the county board of equalization, on the percentage assignment the same as he now has on valuations, and also, the right to appeal from the county board of equalization to the state board of equalization, whose findings shall be final except as to, the right of review in the proper courts.

En. Sec. 2, Ch. 61, L. 1925.

2000.4. Board of equalization to make determination. The percentage basis of true and full value as provided for in section 2000, Revised Codes of Montana of 1921, shall be determined and assigned by the state board of equalization, when it makes its annual assessment of the property, which it is required to assess under the constitution or the laws of this state and shall transmit such determination and assignment to the various county clerks with the assessments so made, and its determination shall be final except as to the right of review in the proper court.

En. Sec. 3, Ch. 61, L. 1925.

2000.5. County clerk to apply percentage. The county clerk and recorder of the various counties shall apply the percentage after the delivery of the assessment-roll to him, provided, however, that the assessor shall give the basis of taxation on all personal property he certifies to the county treasurer, for collection of personal property taxes.

En. Sec. 4, Ch. 61, L. 1925.

2000.6. Assessor's blanks and rolls. It shall be made the duty of the state board of equalization to prescribe such forms of assessment blanks and assessor's rolls as will comply with the above provisions, grouping all the same percentage class as nearly as possible in one group on blanks and assessor's roll.

En. Sec. 5, Ch. 61, L. 1925.

CHAPTER 160.

ASSESSMENT OF PROPERTY—VALUATION OF REAL ESTATE—POWERS,
DUTIES AND LIABILITIES OF ASSESSOR.**2001. Property assessed at cash value.**

Cited in State ex rel. Northern Pacific Ry. Co. v. Duncan, 68 Mont. 420, 425, 219 Pac. 638. For text treatment of this subject see vol. 24 Cal. Jur. 203.

2002. When assessment to be made—Credits must be assessed, how.

Cited in Northern Pacific Ry. Co. v. Musselshell County, 74 Mont. 81, 87, 238 Pac. 872; Butte Electric Ry. Co. v. McIntyre, 71 Mont. 21, 22, 227 Pac. 61. Cited as section 2510, Revised Codes, in Averill Machinery Co. v. Freebury Bros., 59 Mont. 594, 598, 198 Pac. 130. Sections 2002, 2003 were cited in State ex rel. Rankin v. Harrington, 68 Mont. 1, 17, 217 Pac. 681. For text treatment of this subject see vol. 24 Cal. Jur. 159.

2002.1. Valuation of real estate for assessment in 1927. All real estate and all improvements on real estate, in this state, subject to taxation, except such as is required to be assessed by the state board of equalization, shall be separately valued for assessment and taxation purposes in the year 1927, and biennially thereafter in each odd-numbered year, with reference to the value thereof at 12 o'clock noon on the first Monday of March preceding the assessment, and such valuation in each such odd-numbered year shall constitute the assessed valuation thereof until the next biennial assessment, except as hereinafter provided; provided, however, that nothing contained herein shall be construed as preventing or prohibiting county boards of equalization or the state board of equalization from either increasing or decreasing the assessed valuation of any real property or improvements in any year, or as preventing or prohibiting the state board of equalization from increasing or decreasing the assessment of any one or more classes of property in any county or counties in any year, for the purpose of equalizing the value of property for taxation.

En. Sec. 1, Ch. 110, L. 1927.

2002.2. Valuation by assessor—Effect destruction improvements. Each assessor shall annually value and assess all real estate that shall have become subject to taxation since the last previous valuing and assessing of real estate in the county, or which has escaped taxation the preceding year, and he shall also annually value and assess all buildings, structures and other improvements on real estate which shall not have been previously valued and assessed. In case of the destruction of any building, structure, or other improvement on real estate, valued and assessed in the assessment for the year immediately preceding such destruction, such building, structure, or other improvement shall be struck from the assessment and shall not thereafter be assessed.

En. Sec. 2, Ch. 110, L. 1927.

2003. Statement—What to contain.

Cited in State ex rel. Northern Pacific Ry. Co. v. Duncan, 68 Mont. 420, 424, 219 Pac. 638. Cited as section 2511, Revised Codes, in Great Northern Ry. Co. v. Flathead County, 61 Mont. 263, 267, 202 Pac. 198.

2006. General powers of assessor.

Where plaintiff, in an action to recover taxes paid under protest, had not refused to furnish a statement of his taxable property but had furnished an incorrect one, the assessor was without power to make the arbitrary assessment provided for in section 2007, but the assessor should have proceeded to ascertain the

facts under the powers granted him by this section, by citing plaintiff to appear before him and answer as to his property. *Story v. Dixson*, 64 Mont. 206, 208 Pac. 592.

For text treatment of this subject see vol. 24 Cal. Jur. 175.

2007. Method of making assessment upon refusal of statement.

This section, providing that upon refusal or neglect of a taxpayer to furnish to the assessor a statement of his property subject to taxation, the assessor may make an arbitrary estimate which shall

be final, being highly penal, its scope should not be extended to a case not clearly within its provisions. *Story v. Dixson*, 64 Mont. 206, 208 Pac. 592.

2008. Assessment of unknown or absent owners.

Sections 2008–2017, inclusive, are cited in *State ex rel. Rankin v. Harrington*, 68 Mont. 1, 17, 18, 217 Pac. 681.

2009. Same—In whose name property to be assessed.

Cited as section 2517, Revised Codes, in *Averill Machinery Company v. Free-bury Bros.*, 59 Mont. 594, 598, 198 Pac. 130.

2013. Property of a firm or corporation—Where assessed.

Cited in *Fergus Motor Co. v. Sorenson*, 73 Mont. 122, 136, 235 Pac. 422.

2015. Capital stock and franchises of corporations—Where assessed.

Shares of stock, if within the state, whether belonging to residents or non-residents, are proper subjects of taxation. *State ex rel. Rankin v. Harrington*, 68 Mont. 1, 217 Pac. 681.

For text treatment of this subject see vol. 24 Cal. Jur. 84.

2021. Assessment of railroads, telegraph, telephone and electric light lines.

Sections 2021–2023 were cited in *State ex rel. Rankin v. Harrington*, 68 Mont. 1, 18, 217 Pac. 681.

2022. Railroads—How assessed.

Cited as section 2508, Revised Codes, in *Great Northern Ry. Co. v. Flathead County*, 61 Mont. 263, 267, 202 Pac. 198.

2023. Land—How assessed.

Cited in *State ex rel. Northern Pacific Ry. Co. v. Duncan*, 68 Mont. 420, 423, 219 Pac. 638.

2024. Uniform classification of lands for taxation.

A curative statute of the nature of sections 2024–2031, which is intended to be retroactive and does not impair the obligation of contract, but the purpose of which is to enable a county to pay just claims which it could not pay because of a constitutional defect in the act under which incurred, applies even

though it was passed after the claims had been presented to the board of county commissioners for approval or rejection. *State ex rel. Lockwood v. Tyler*, 64 Mont. 124, 208 Pac. 1081.

Chapter 89, L. 1919, which was the predecessor of this act, was held to contravene the requirements of section 17,

article XII, of the constitution that all property described in said section, except such as is exempted shall be taxed for public purposes. *Stoner v. Timmons et al.*, 59 Mont. 158, 196 Pac. 519.

2026. Basis of classification.

Cited in *State ex rel. Northern Pacific Ry. Co. v. Duncan*, 68 Mont. 420, 424, 219 Pac. 638.

2027. Classification fund—Warrants—Payment of existing contracts.

Cited in *State ex rel. Lockwood v. Tyler*, 64 Mont. 124, 127, 208 Pac. 1081.

2034. Property not assessed the previous year.

Cited in *Butte & Superior Mining Co. v. McIntyre*, 71 Mont. 254, 262, 229 Pac. 730.

2038. Traveling expenses of assessor and deputies. The assessor and his deputies in each county in this state shall be paid the actual and necessary traveling expenses by them incurred, not to exceed fifty dollars each, in any one month, during the months of March, April, May and June of each year, while in the performance of official duty, upon presenting and filing a verified claim thereof, supported by vouchers, for each item of expense, to the board of county commissioners of their respective county.

Amd. Sec. 1, Ch. 43, L. 1925.

2039. Assessors liable for unassessed property.

Cited in *County of Silver Bow v. Kelly et al.*, 68 Mont. 194, 197, 216 Pac. 1106.

CHAPTER 161.

THE ASSESSMENT-BOOK—STATEMENTS FURNISHED BY ASSESSOR.

2048. Property—How listed.

Cited in *Belknap Realty Co. v. Simineo et al.*, 67 Mont. 359, 361, 215 Pac. 659.

CHAPTER 162.

TAXATION OF BANKS.

2064. Assessment of stock in banking corporations.

This and the three following sections were cited as chapter 81, L. 1921, in *Union Bank & Trust Co. v. Moore*, 62 Mont. 132, 135, 204 Pac. 361.

Cited in *First Nat. Bank v. County of Dawson*, 66 Mont. 321, 330, 213 Pac. 1097.

2066. Statements to be furnished by officers.

The fact that a bank furnished to an assessor the information upon which an unlawful assessment was made did not estop it to thereafter attack the validity of the tax, where the act under which

the assessment was made, provided a penalty for failure to furnish it and the information was thus given under compulsion. *Union Bank & Trust Co. v. Moore*, 62 Mont. 132, 204 Pac. 361.

2067. Taxation of state and private banks—Statements. Every state bank or banking corporation located and doing business in this state, and every private banker doing business in this state, shall be taxable upon the value of all real estate and personal property owned by such bank,

banking corporation or private banker, and also upon the moneyed capital employed in such business; such moneyed capital to be ascertained as provided by section 1999 of the Revised Codes of Montana of 1921; and the cashier or secretary of every such bank or banking corporation, and every such private banker, shall furnish to the assessor of the county in which its or his bank is located, within five days after demand therefor, a statement verified by his oath, showing all the resources and liabilities of such bank as disclosed by its books, at twelve o'clock noon on the first Monday of March in each year; if such cashier, secretary or private banker shall fail to make the statement hereby required, the assessor shall forthwith obtain such information from any other available source, and for this purpose he shall have access to the books of such bank, banking corporation or private banker. The assessor shall thereupon make an assessment of the real estate and personal property owned by such bank, banking corporation or private banker, and of the moneyed capital employed in the business of such bank, banking corporation or private banker, which assessment shall be as fair and equitable as he may be able to make from the best information available, or said assessor may, for the purpose of said assessment, adopt the figures disclosed by any prior report made by such bank, banking corporation or private banker to any state or federal officer pursuant to any state or federal law. Any person required by this section to make the statement hereinabove provided, who shall fail to furnish the same, shall be guilty of a misdemeanor and shall be punished accordingly.

All shares of stock in any such bank or banking corporation shall be assessed at their full cash value, except to the extent that that value is represented in property which is assessable and taxable to such bank or banking corporation in this state, and shall be taxable to the owners of such shares in the county, school district, city, town, or place where such bank or banking corporation is located and not elsewhere, whether or not the owners of such shares are residents of such county, school district, city, town or place. The cashier or secretary of any such bank or banking corporation shall furnish to the assessor, upon his demand therefor, the name of each stockholder with his residence and the number of shares belonging to him at twelve o'clock noon of the first Monday in March of each year; and if such cashier or secretary, for more than five days after such demand, shall fail to furnish such information, he shall be guilty of a misdemeanor and the assessor may obtain such information from any other available source, and for such purposes shall have access to the books of such bank or banking corporation. For convenience the assessment of such shares shall be entered on the personal property assessment list under the name of the bank or banking corporation concerned, but in the assessment list the names of the owners of such shares shall be set forth and the number of shares owned by each, and such assessment, when so entered, shall have all the force and effect as if made in the names of the owners of such shares individually. The bank or banking corporation in which such shares are owned shall be liable for the payment of taxes assessed against such shares, and such taxes shall be payable by and may be collected from such bank or banking corporation in the same manner and under the same penalties as other taxes;

provided that such bank or banking corporation may recover from such owners of shares any taxes so paid on such shares, and shall have a lien therefor upon such shares and upon any dividends accrued or to accrue thereon.

Amd. Sec. 1, Ch. 64, L. 1927.

Cited in *First Nat. Bank v. County of Dawson*, 66 Mont. 321, 330, 213 Pac. 1097.

CHAPTER 163.

BOUNTY FUND—TAXATION OF LIVESTOCK BROUGHT INTO STATE TO GRAZE.

2069. Assessment of migratory livestock.

Under the proviso in this section, livestock moved from one county within the state to a neighboring county for winter feeding and not for the purpose of running at large or grazing in the latter county, is assessable in its home county and not in the county in which

the feeding is done; the provisions of section 2070 relating to migratory stock having no application to animals falling within the proviso in the former section. *Peterson v. Granite County*, 76 Mont. 214, 245 Pac. 946.

2070. Duty of owner when livestock is removed from home county to another county.

Applied with section 2069 in *Peterson v. Granite County*, 76 Mont. 214, 245 Pac. 946.

2081. Bounty fund and tax levy. There is hereby created a fund, to be known as the "bounty fund." The tax commission, or the department of state whose duty it is to fix tax levies, shall annually prescribe the levy recommended by the livestock commission to be made against livestock of all classes, for the purpose of paying for the destruction of wild animals killed within the state, which tax in any one year shall not exceed one and one-half ($1\frac{1}{2}$) mills on a dollar upon the assessed valuation of such livestock, and such moneys so received shall be used and applied only to the payment of claims for the destruction of wild animals and to the administration of the provisions of this act, approved by the livestock commission, and the moneys received for the taxes so levied shall be transmitted annually with other taxes for state purposes to the state treasurer by the county treasurer of each county, and when received by the state treasurer shall be placed to the credit of the bounty fund, and such moneys shall thereafter be paid out on claims approved as aforesaid, duly and regularly presented to the state board of examiners, in accordance with the law governing the payment of claims allowed by said board, and all moneys in said fund are hereby appropriated for such purposes.

Amd. Sec. 4, Ch. 73, L. 1923.

2081.1. Time of bounty payment. The livestock commission may, at their discretion, pay such bounty for the destruction of wild animals at such times of the year as they deem advisable.

En. Sec. 4½, Ch. 73, L. 1923.

2083. Petition—Signers and filing—Bounties and bounty inspectors. The petition provided for in section 2082 of the Revised Codes of Montana,

1921, shall be signed by the owners, agent, or agents of not less than fifty-one per cent of the livestock of such county as ascertained from the assessment-books of such county, and shall recommend to the board of county commissioners the bounties to be paid on such predatory animals, which shall not exceed the following: On each wolf or mountain lion, one hundred dollars; on each wolf pup or mountain lion kitten, twenty dollars; on each coyote, five dollars; on each coyote pup, two dollars fifty cents.

Such petition shall be presented not later than the first day of August of each year, and the board of county commissioners on determining the sufficiency of such petition shall make an order granting such petition, which said order shall fix the levy for that year, and the amount of the bounties to be paid for the killing of each such predatory animal, which shall not exceed the amounts recommended in such petition, and appoint not less than ten, nor more than twenty, stockholders of such county to be bounty inspectors under this act, without compensation, who shall hold their offices for one year.

Amd. Sec. 1, Ch. 37, L. 1923.

2087.1. License tax imposed on stock coming into state to graze. A license tax of forty cents (40c) per head on horses, mules and cattle and ten cents (10c) per head on sheep, or any other livestock, is hereby imposed upon all such livestock coming into this state to graze for any length of time whatsoever, provided, however, that no livestock on which the regular annual tax is levied by any county of the state shall pay said license tax.

En. Sec. 1, Ch. 101, L. 1927.

2087.2. Owner to notify county treasurer. It shall be the duty of every person, whether he be the owner or agent of the owner bringing livestock into this state, for grazing purposes as hereinbefore provided, to immediately notify in writing the county treasurer of the county in which said livestock is being grazed, the number of livestock and the location of the land on which said livestock is being grazed.

En. Sec. 2, Ch. 101, L. 1927.

2087.3. Assessor to ascertain stock liable to tax. It shall be the duty of the county assessor to ascertain if there is any livestock from without this state temporarily grazing within his county and to report the number of such livestock, their location and the name of the owner, or person in charge, to the county treasurer, who shall immediately after receipt of such notice from the assessor or owner of such livestock proceed to collect the sum of money due and payable from the person, so keeping and herding said livestock, or his agent, and in the event that it is necessary for the said treasurer to collect the taxes due upon said livestock by distress and sale of said livestock he may proceed without any further warrant for that purpose, and all necessary expenses and costs accruing from such sale shall be deducted in the same manner as is now

provided by law for the collection of taxes assessed upon personal property.

En. Sec. 3, Ch. 101, L. 1927.

2087.4. Penalty. Any person named in paragraph two of this act, or his agent, who shall bring any livestock into this state for grazing purposes and shall keep and herd the same in any county of this state without having first notified in writing the county treasurer of the county in which said livestock is grazing, of such entry into this state of said livestock, and without paying the amount of money per head, as hereinbefore provided, shall be fined in the sum of not less than ten dollars (\$10) nor more than one hundred dollars (\$100) to be imposed and collected in the same manner as other penalties for violations of laws of this state are imposed and collected.

En. Sec. 4, Ch. 101, L. 1927.

2087.5. Disposal of moneys. All moneys collected under this act shall be divided equally between the general fund of the school district, or districts, in which the livestock is being grazed and the general fund of the county.

En. Sec. 5, Ch. 101, L. 1927.

CHAPTER 164.

TAXATION OF MINES—NET PROCEEDS TAX.

2088. Taxation of mines.

By sections 2088 to 2096 the legislature has prescribed a definite and fixed method for arriving at the net proceeds of mines. This it has done by adopting the actual

cost basis for deductions. *Anaconda Copper Mining Co. v. Junod*, 71 Mont. 132, 227 Pac. 1001.

2089. Statement gross yield of mines. Every person, corporation or association engaged in mining upon any quartz vein or lode, or placer mining claim or mining from or upon any mine whatsoever containing gold, silver, copper, lead, petroleum or other valuable mineral or minerals deposit must on or before the thirty-first day of March in each year make out a statement of the gross yield of the above named metals or minerals from each mine owned or worked by such person, corporation or association during the year preceding the first day of January, and the value thereof. Such statement shall be in the form prescribed by the state board of equalization and must be verified by the oath of such person or the manager, superintendent, agent, president or vice-president of such corporation, association or partnership and must be delivered to the state board of equalization on or before the thirty-first day of March. Such statement shall show the following:

1. The name and address of the owner or lessee of the mine, together with the names and addresses of any and all persons, corporations or associations owning or claiming any royalty interest in the mineral product of such mine or the proceeds derived from the sale thereof, together with the amount of such interest so owned or claimed on the first Monday of March of the year in which said statement is made, and

the amount or amounts paid or yielded as royalty upon such royalty interest or interests during the period covered by the statement.

2. The description and location of the mine.

3. The number of tons of ore, barrels of petroleum or other mineral products or deposits extracted and treated or sold from the mine during the period covered by the statement.

4. The amount and character of such ores, mineral products or deposits, and the yield of such ores, mineral products or deposits from such mine in constituents of commercial value; that is to say, the number of ounces of gold, or silver, pounds of copper or lead, tons of coal, barrels of petroleum or other crude or mineral oil, or other commercially valuable constituents of said ores or mineral products or deposits measured by standard units of measurement yielded to such person, corporation or association so engaged in mining, and to said royalty holders and each of them, if any, during the period covered by the statement.

5. The gross yield or value in dollars and cents.

6. Actual cost of extracting same from mine.

7. Actual cost of transporting to place of reduction or sale.

8. Actual cost of reduction or sale.

9. Actual cost of marketing the product and conversion of same into money.

10. Cost of construction, repairs and betterments of mines, and cost of repairs and replacements of reduction works.

11. The assessed valuation of reduction works for the calendar year for which such return is made.

Immediately upon receipt of the list or schedule setting forth the names and addresses of any and all persons, corporations and associations owning or claiming royalty and the amount of such interest or interests and the amount or amounts paid or yielded as royalty to such royalty owners or claimants during the year for which such return is made, the state board of equalization shall certify such list or schedule to the county clerk of each county in which such mines and mining claims are located, and thereupon such royalty shall be assessed and taxed in the manner provided by law.

Amd. Sec. 1, Ch. 191, L. 1925; Amd. Sec. 1, Ch. 139, L. 1927.

Under sections 2088-2096, the lessee of a (coal) mine, i. e., the person engaged in mining, and not the owner, is the proper party to whom net proceeds are assessable. *Northern Pacific Ry. Co. v. Musselshell County*, 74 Mont. 81, 238 Pac. 872.

The legislature could properly add powers additional to those specifically conferred by section 15, article XII, of the constitution, upon the state board of equalization, as it did by sections 2089-2096, by imposing upon the board the duty to assess net proceeds of mines. *Butte & Superior Mining Co. v. McIntyre*, 71 Mont. 254, 229 Pac. 730.

By the enactment of sections 2089-2096, making net proceeds of mines assessable by the state board of equaliza-

tion and repealing sections 2563-2571, Revised Codes of 1907, under which the duty of assessing such proceeds had been placed upon the county taxing officers, a county assessor was without authority to assess net mine proceeds, and mandamus did not lie to compel him to obey an order of the county board of equalization that he do so. *State v. State Board of Equalization*, 67 Mont. 340, 215 Pac. 667.

The state board of equalization is a special tribunal with limited powers and must, in making an assessment of net proceeds of mines, pursue the method of procedure prescribed by sections 2089-2096; in it is lodged no discretion to permit deductions from the gross proceeds other than those specifically provided for, or to allow reimbursement to the taxpayer for taxes paid by him by mistake

in previous years, and mandamus lies to compel the board to follow the law. State v. State Board of Equalization, 67 Mont. 340, 215 Pac. 667.

Cited in *Anaconda Copper Mining Co. v. Junod*, 71 Mont. 132, 135, 227 Pac. 1001.

2090. Net proceeds—how computed. The state board of equalization shall thereupon calculate and compute from said returns the gross product yielded from such mine, and its gross value in dollars and cents for the year preceding the first day of January, and also shall calculate and compute the net proceeds in dollars and cents of said mine yielded to such person, corporation or association so engaged in mining, which said net proceeds shall be ascertained and determined by subtracting from the value in dollars and cents of the gross product thereof the following, to wit:

1. All royalty paid or apportioned in cash or in kind by the person, corporation or association so engaged in mining.

2. All moneys expended for necessary labor, machinery and supplies needed and used in the mining operations and developments.

3. All moneys expended for improvement, repairs and betterments necessary in and about the working of the mine.

4. All moneys expended for costs of repairs and replacements of the milling and reduction works used in connection with the mine.

5. Depreciation in the sum of six per cent (6%) of the assessed valuation of such milling and reduction works for the calendar year for which such return is made.

6. All moneys expended for transporting the ores, and mineral products or deposits from the mines to the mill or reduction works or to the place of sale, and for extracting the metals and minerals therefrom, and for marketing the product and the conversion of the same into money.

No moneys invested in the mines and improvements during any year, except the year for which such statement is made, shall be included in such expenditures; and such expenditures shall not include the salaries, or any portion thereof, of any person or officer not actually engaged in the working of the mine or superintending the management thereof.

Provided, further, that if any such report contains any wilfully false or fraudulent statements as to the gross amount received by any person, corporation or association so engaged in mining as aforesaid, for any mine's product, then the said state board of equalization shall compute the gross value of such mine's product, and such gross value shall be based upon the average quotations of the price of such mine's product in New York City, or the relative market value at the point of delivery, as evidenced by some established authority or market report, such as the Engineering and Mining Journal-Press, of New York City, or some other standard publication, giving the market reports for the year covered by the statement; and, provided, further that if any such person, corporation, or association has sold or otherwise disposed of any of its mine's product at a price substantially below the true market price of such product at the time and place of such sale or disposal, then the state board of equalization shall compute the gross value of such portion of said mine's product, so sold or disposed of substantially below the market price as aforesaid, which gross value shall be based upon the

quotations of the price of such mine's product in New York City, or the relative market value at the point of delivery at the time such portion of the product was so sold or otherwise disposed of, as evidenced by some established authority or market report, such as the Engineering and Mining Journal-Press, of New York City, or some other standard publication, giving the market reports for the year covered by such statement. Should there be no quotation covering any particular product, then the state board of equalization shall fix the value of such gross product, or such portion thereof as shall have been sold or otherwise disposed of at a price substantially below the true market price at the time and place of such sale or disposal in such a manner as may seem to be equitable.

Amd. Sec. 2, Ch. 191, L. 1925; Amd. Sec. 2, Ch. 139, L. 1927.

Since the legislature in its definition of the term "net proceeds" of mines has designated the deductions from the gross yield allowable in arriving at such proceeds, no others are permissible; hence amounts paid as rent or royalties by the lessee of the mine to the owner, not

therein enumerated as items of cost of mining property deductible, may not be deducted. Northern Pacific Ry. Co. v. Musselshell County, 74 Mont. 81, 238 Pac. 872.

Cited in Anaconda Copper Mining Co. v. Junod, 71 Mont. 132, 136, 227 Pac. 1001.

2091. Certification of net proceeds to county clerk.

Sections 2091, 2092 and 2095 were cited in Northern Pacific Ry. Co. v. Mussel- shell County, 74 Mont. 81, 86, 238 Pac. 872.

2095. Levy and collection of tax. The taxes on such net proceeds must be levied as the levy of other taxes are provided for, and every such tax is a lien upon the mine or mining claim from which the ore or mineral products or deposits are mined or extracted, and is a prior lien upon all personal property and improvements used in the process of extracting such ore or mineral products or deposits; provided, however, that such personal or real property is owned by or under lease by the person, partnership, association or corporation who extracted said ore, or mineral products or deposits.

The tax on such net proceeds may be collected, and the payment thereof, enforced, by the seizure and sale of the personal property upon which the said tax is a lien, in the same manner as other personal property is seized and sold for delinquent taxes, or by the sale of the mine or mining claim and improvements, as provided for the sale of real property for delinquent taxes, or by the institution of a civil action for its collection in any court of competent jurisdiction; provided, however, that a resort to any one of the methods of enforcing collection, as herein provided for, shall not bar the right to resort to either or both of the other methods, but that any two or all of the methods herein provided for may be used until the full amount of such tax is collected.

Amd. Sec. 1, Ch. 143, L. 1925.

2096. Surface ground and improvements not exempt.

Cited in Anaconda Copper Mining Co. 1001; State v. State Board of Equaliza- v. Junod, 71 Mont. 132, 136, 227 Pac. tion, 67 Mont. 340, 348, 215 Pac. 667.

2096.1. Owners royalty interests in mines to make statement. Every person, corporation or association engaged in mining upon any quartz vein or lode or placer mining claim or mining from or upon any mine whatsoever containing gold, silver, copper, coal, lead, petroleum or other valuable minerals or mineral deposits, shall, on or before the thirty-first day of March of each year, make and deliver to the state board of equalization a full, true and complete verified statement, setting forth the name and address of the owner or lessee of the mine, together with the names and addresses of any and all persons, corporations or associations owning or claiming any royalty interest in the mineral product of such mine, or the proceeds derived from the sale thereof, together with the amount of such interest so owned or claimed on the first Monday of March of the year in which such statement is made and the amount or amounts paid or yielded as royalty upon such royalty interest or interests during the preceding calendar year.

En. Sec. 1, Ch. 140, L. 1927.

2096.2. Assessment by board of equalization. Upon receipt of such statement the state board of equalization shall proceed to the assessment of all such royalty interests and shall assess the same at the full cash value thereof, which shall be the full cash value of the money or product yielded as royalty during the preceding calendar year, which royalty interests shall be taxed on the same basis as net proceeds of mines are taxed as provided by section 1999 of the Revised Codes of Montana of 1921. The state board of equalization shall certify such list or schedule, together with the said assessments to the county clerk of the county in which such mines and mining claims are located, and such county clerk shall thereupon, for convenience, enter such assessment on the personal property assessment list under the name of the operator of such mine or mines, but in the assessment list the names of the owners of such royalty shall be set forth and such assessment when entered shall have all the force and effect as if made in the names of the owners of such royalty individually. Immediately upon the spreading of such assessment the county clerk shall deliver to such operator a full and complete list showing all assessments against such royalty owners and each thereof. The operator and the royalty holder shall be jointly and severally liable for the payment of the taxes assessed against such royalty and such taxes shall be payable by, and may be collected from such operator in the same manner and under the same penalties as provided for the collection of taxes upon net proceeds of mines and such assessment shall also be and constitute a lien upon such royalty and royalty interests. Provided, however, that such operator may recover or withhold, from any proceeds of such royalty or royalty interest, either in kind or money, coming into his hands the amount of any tax paid by him upon such royalty or royalty interest.

En. Sec. 2, Ch. 140, L. 1927.

CHAPTER 165.

TAXATION OF FREIGHT LINE COMPANIES.

2099. Freight line companies to file statements—Contents. Every freight line company as hereinafter defined, shall annually, between the first and thirtieth day of April, under the oath of the person constituting such company, if a person, or under the oath of the president, secretary, treasurer, superintendent, manager or chief officer of such association, joint-stock company, or corporation, file with the state board of equalization, a statement in such form as the state board of equalization may require and prescribe, showing the following:

1. The name of the person or persons, association, joint-stock company or corporation.
2. Under the laws of what state or country organized or existing.
3. The location of its principal office.
4. The location of its principal office in this state, if any.
5. The name and postoffice address of the president, secretary, auditor, treasurer, superintendent, general manager, or chief officer.
6. The total gross earnings received from all sources from the operation of such freight line company within this state for the year next preceding the first day of January.
7. Such other facts and information as the state board may require in the form of return prescribed by it.

Amd. Sec. 1, Ch. 185, L. 1925.

2101. Ascertainment of gross earnings—Tax levy. The state board of equalization shall, on or before the first Monday of June in each year, proceed to ascertain and determine the total gross earnings of each freight line company from all sources from the operation of such freight line company within this state for the year preceding the first day of January, and the amount of such total gross earnings as so ascertained and determined by said state board of equalization shall, be deemed and considered as the assessed value of all cars operated, furnished or leased by such freight line company and having a situs for taxation in this state, and such board of equalization shall, immediately after having determined the value of such property, levy and assess against such property a tax amounting to five per cent of such taxable value, as is provided in class 7 of section 1999 and 2000 of the Revised Codes of 1921.

Amd. Sec. 2, Ch. 185, L. 1925.

2103. Statement gross earnings and tax to be mailed companies—Protests. The state board of equalization shall, immediately upon the first day of June of each year, mail to each freight line company a statement showing the amount of the total gross earnings received from all sources from the operation of such freight line company within this state for such year, as ascertained and determined by the state board of equalization, together with the amount of the tax assessed and levied by the state board of equalization, against the property of such freight line company, and such freight company may, at any time before the

third Monday in June, file with said state board of equalization a protest in writing, against such determination or assessment, or both, and the state board of equalization may, on the filing of such protest, or on its own motion, review and correct its findings in such manner as it may deem to be just and proper; provided, however, that no action of any kind shall be instituted or maintained by any freight line company to enjoin the collection of any tax, or to enjoin the sale of any property seized by the state treasurer on account of nonpayment of any such tax, or to recover any tax, or any portion thereof, paid under protest, unless such freight line company shall have filed with said board a protest, in writing in the manner and form and within the time provided in this section.

Amd. Sec. 3, Ch. 185, L. 1925.

2105. Certification of valuation for taxation. The state board of equalization shall, immediately after the first day of July, or, if a protest has been filed by any freight line company, immediately after the state board of equalization has finally acted thereon, enter in a book provided for that purpose, the amount of the total gross earnings for each and every freight line company for the year preceding the first day of January, the valuation of the cars of such freight line company for taxation in this state, and the amount of the tax assessed and levied against such cars, as ascertained, determined, fixed, assessed, and levied by such state board of equalization, and the state board of equalization shall, immediately thereafter certify the same to the state treasurer as the value for taxation of all cars operated, furnished or leased by such freight line company in this state, and the amount of the tax levied and assessed against the same.

Amd. Sec. 4, Ch. 185, L. 1925.

CHAPTER 167.

COUNTY BOARDS OF EQUALIZATION.

2113. County commissioners—When to equalize assessment.

Cited in *Butte Electric Ry. Co. v. McIntyre*, 71 Mont. 21, 23, 227 Pac. 61.

Sections 2113-2121 were cited in *Belknap Realty Co. v. Simineo et al.*, 67 Mont. 359, 361, 215 Pac. 659.

2114. Board may equalize assessments—Notice. The board has power, after giving notice in such manner as it may by rule prescribe, to increase or lower any assessment contained in the assessment-book, so as to equalize the assessment of the property contained therein, and make the assessment conform to the true value of such property in money, and immediately after reaching a decision the board shall notify the taxpayer, in writing, of such decision, specifying the change, if any, made in the assessment; said notice to be given by registered mail, addressed to the taxpayer at his last known place of residence.

Amd. Sec. 1, Ch. 43, L. 1927.

2115. The person aggrieved must apply.

Failure of the complaint in an action to recover taxes paid under protest to allege that plaintiff before bringing suit had filed written application to the county board of equalization for reduction of the taxes claimed to be excessive and that upon its refusal to act he had appealed to the state board of equalization, renders the pleading insufficient. *Belknap Realty Co. v. Simineo*, 67 Mont. 359, 215 Pac. 659.

Where taxes upon lands were valid, but are complained of as excessive, the question of their excessiveness must primarily have been presented to the county board of equalization under this

section before resort may be had to the statutory remedies. *Thwing v. Weiser et al.*, 65 Mont. 28, 210 Pac. 750.

The portion of a complaint in an action to set aside a tax certificate, relating to alleged excessive taxation, was insufficient to state a cause of action in the absence of an allegation that the precedent preliminary steps had been taken entitling plaintiff to maintain action for their cancellation. *Thwing v. Weiser et al.*, 65 Mont. 28, 210 Pac. 750.

For text treatment of this subject see vol. 24 Cal. Jur. 232.

CHAPTER 168.**STATE BOARD OF EQUALIZATION.****2122. Who constitute the board.**

Rep. Sec. 19, Ch. 3, L. 1923.

2122.1. State board of equalization—Composition—Term—Vacancies.

The state board of equalization, created by article XII of the constitution as amended shall be composed of three members to be appointed by the governor by and with the advice and consent of the senate. The members of said board shall be appointed within ten days after the passage of this act, and before the adjournment of the present legislative assembly. The governor shall designate the term of service of each member first appointed, so that the term of one shall end March 1, 1925, of another March 1, 1927, and of the third March 1, 1929. Each succeeding member shall hold his office for a term of six years, and until his successor shall be appointed and shall have qualified. Any vacancy shall be filled by appointment in accordance with the provisions of the constitution. Succeeding appointments, except when made to fill a vacancy, shall be made on or before the last day of January during the biennial session of the legislative assembly, next preceding the commencement of the term for which the appointment is made.

En. Sec. 1, Ch. 3, L. 1923.

2122.2. Qualification and compensation. The persons to be appointed as members of such board shall be such as are known to possess knowledge of the subject of taxation and skill in matters pertaining thereto. No persons so appointed shall hold any other office under the laws of this state nor any other state, nor any office under government of the United States, or of any other state. He shall devote his entire time to the duties of the office and shall not hold any position of trust or profit, nor engage in any occupation or business interfering or inconsistent with his duties, or serve on or under any committee of any political party, or take part either directly or indirectly in any political campaign in the interest of any political party, or organization or candidate for office. Each member shall receive an annual salary of five thousand

(\$5,000) dollars, payable in equal monthly installments. He shall also be paid his actual traveling and other expenses when away from the capital on official business.

En. Sec. 2, Ch. 3, L. 1923.

2122.3. Organization, quorum, sessions. The members of said board of equalization first appointed, shall without delay, meet at the state capital and shall organize and elect one of their members as chairman. A majority of said board shall constitute a quorum. It shall be in continuous session and open for the transaction of business every day except Sundays and legal holidays; and the sessions of said board shall stand and be deemed to be adjourned from day to day without formal entry thereof upon its records. The board may hold sessions or conduct hearings and investigations at other places than the capitol when deemed necessary to facilitate the performance of its duties or to accommodate parties in interest.

En. Sec. 3, Ch. 3, L. 1923.

2122.4. Definitions. (1) The term "state board" or "board" when used in this act without other qualification, shall mean the state board of equalization.

(2) The term "person," when used in this act, shall mean and include any individual, firm, partnership, association or corporation unless otherwise expressly stated.

(3) The phrase "municipal corporation" or "municipality" or "taxing unit" when used in this act shall be deemed to include a county, city, incorporated town, township, school district, irrigation district, drainage district, or any person, persons, or organized body authorized by law to establish tax levies for the purpose of raising public revenue.

En. Sec. 4, Ch. 3, L. 1923.

2122.5. Clerks, experts, rules. Said board may appoint a secretary and employ such other persons as experts, assistants, clerks and stenographers as may be necessary to perform the duties that may be required of it, and fix their compensation, provided, however, that the total expenses of such board shall not exceed in the aggregate during any fiscal year the amount appropriated for the board for all purposes by the legislature for such year; and provided further that no experts, or assistants shall be employed by the said board except after written approval of the governor filed with the board of examiners. Said board may also require the assistance of any engineer in the service of any department of the state government without additional compensation other than such as he is already receiving. The secretary shall keep full and correct minutes of the transactions and proceedings of said board, shall have authority to administer oaths and perform such other duties as may be required of him.

The board may make all needful rules for the orderly and methodical performance of its duties as a board of equalization or otherwise and for conducting hearings and other proceedings before it.

En. Sec. 5, Ch. 3, L. 1923.

2122.6. Office expenses. The board shall keep its office at the capitol, and shall be provided with suitable and necessary offices and office furniture, printing, supplies, stationery, books, periodicals, and financial and commercial reports.

En. Sec. 6, Ch. 3, L. 1923.

2122.7. Continuity of action of former board. All records, books, documents, reports, and correspondence, received and kept by the former state board of equalization, and all other property in its possession, shall immediately, upon the organization of the new board, be transferred to it for its use and convenience. The board shall have and possess all the powers and authority and be subject to all the duties heretofore possessed by and imposed upon the former state board of equalization. The board shall continue and complete any and all work undertaken or commenced and not completed by its predecessor. All acts of the former state board of equalization initiated and completed in whole or in part since the adoption of the constitutional amendment creating the new board are hereby ratified and confirmed in such manner as to preserve the continuity of all action taken by the state board of equalization regarding taxation or any other duties imposed upon it relating to public revenue. The salaries and traveling expenses of assistants and clerks, formerly employed by the old board, for services performed from the time of the adoption of the constitutional amendment until the organization of the new board shall be paid as though the old board had been continued in full force and effect until the organization of the new board, and shall be paid out of the appropriation for such purposes made for the former board.

Officers of municipal corporations heretofore required to make reports to the state board of equalization shall report to the board hereby constituted.

En. Sec. 7, Ch. 3, L. 1923.

2122.8. Powers and duties defined. It shall be the duty of the board and it shall have power and authority in addition to any authority under the present statutes:

(1) To prescribe rules and regulations, not in conflict with the constitution and laws of the state of Montana, to govern county boards of equalization and the assessors of the different counties in the performance of their duties.

(2) To prepare and enforce the use of forms in relation to the assessment of property.

(3) To annually assess the franchise, roadway, roadbeds, rails, and rolling stock, and all other property of all railroads, and the pole lines and rights of way and all other property of all telegraph and telephone lines, electric power and transmission lines, ditches, canals and flumes, and other similar property, constituting a single and continuous property operated in more than one county in the state, and to apportion such assessments to the counties in which such properties are located on a mileage basis; provided, however, that lots and parcels of real estate not included in right of way, with the buildings, structures and improvements

thereon, dams and power-houses, depots, stations, shops, and other buildings, erected upon right of way, furniture, machinery, and other personal property, shall not be considered as a part of any such single and continuous property, but shall be considered as separate and distinct therefrom, and shall be assessed by the county assessor of the county wherein they are situate.

(4) To transmit to the county clerk of each county its apportionment of all assessments made by such board.

(5) To adjust and equalize the valuation of taxable property among the several counties, and the different classes of taxable property in any county and in the several counties and between individual taxpayers; supervise and review the acts of county assessors and county boards of equalization; change, increase or decrease valuations made by county assessors or equalized by county boards of equalization; and exercise such authority and do all things necessary to secure a fair, just and equitable valuation of all taxable property among counties between the different classes of property and between individual taxpayers.

(6) To have and exercise general supervision over the administration of the assessment and tax laws of the state, and over assessors, county boards of equalization, boards of county commissioners, and other officers of municipal corporations, having any duties to perform under any of the laws of this state relating to taxation to the end that all assessments of property be made relatively just and equal at true value in substantial compliance with law, and to supervise the administration of all revenue laws of the state and assist in their enforcement, and for that purpose may visit each county in the state whenever deemed necessary, and may call, not to exceed one meeting of the county assessors each year at the capitol, for consultation and instruction, the expense of such attendance to be paid by the respective counties.

(7) To confer with, advise and direct officers of municipal corporations as to their duties, with respect to taxation, under the statutes of the state.

(8) To direct proceedings, actions and prosecutions to be instituted to enforce the laws relating to the penalties, liabilities and punishment of public officials and persons, or their agents, for failure or neglect to comply with the provisions of the statutes governing the revenue of the state or municipal corporations; and to cause complaints to be made against assessors and other public officers to the proper district court for their removal from office for official misconduct or neglect of duty.

(9) To require county attorneys to assist in the commencement and prosecution of actions and proceedings for penalties, forfeitures, removals and punishment for violations of the laws of the state in respect to the assessment of property and other revenue laws, in their respective counties.

(10) To collect annually from the proper officers of municipal corporations information as to the assessment of property, collection of taxes, receipts from licenses and other sources, the expenditure of public funds for all purposes, and such other information as may be needful and helpful in the work of the board in such form and upon such blanks as the board shall prescribe; and it shall be the duty of all public officers so

called upon to fill out properly and return promptly to the board all blanks so transmitted and in every way aid the board in its work; to examine the records of all municipal corporations for such purposes as are deemed needful or helpful by the board.

(11) In its discretion, to inspect and examine, or cause an inspection and examination of the records of the officers of any municipality, whenever such officer shall have failed, neglected or refused to return properly the information required by this section within the time set by the board. Upon completion of such inspection and examination the board shall transmit to the clerk, or other proper official of the municipality, a statement of the expenses incurred by the board to secure the necessary information. A duplicate of such statement shall be filed in the office of the state board of examiners and when approved and allowed shall be paid the same as other expenses of the board. Within sixty days after the receipt by the municipality of the above statement, the same shall be audited, as other claims of the municipal corporation are audited and shall be paid into the state treasury and if the same is not so paid the attorney general shall institute an action, in the proper court, against the municipality to recover the same.

The officers responsible for the furnishing of the information collected pursuant to this section, shall be jointly and severally liable for any loss the municipality may suffer, through their delinquency; and no payment shall be made to them for salary, or on any other account, until the cost of such inspection and examination as provided above shall have been paid into the treasury, or to the proper officers of such municipality. They also shall be subject to such other fines and penalties as prescribed by law.

(12) To require persons, as defined above, to furnish information concerning their capital, funded or other debt, current assets and liabilities, cost and value of property, earnings, operating and other expenses, taxes and all other facts which may enable the board to ascertain the value of the relative burdens borne by all kinds of property and occupations in the state.

(13) To summon witnesses to appear and give evidence, and to produce records, books, papers and documents relating to any matter which the board shall have authority to investigate and determine.

(14) To cause the deposition of witnesses residing within or without the state, or absent therefrom, to be taken upon notice to the interested party, if any, in like manner that depositions are taken in actions pending in the district court, in any matter which the board shall have authority to investigate and determine.

(15) To examine into all cases where evasion or violation of the laws for taxation of property, proceeds, occupation or business is alleged, complained of or discovered, and to ascertain wherein existing laws are ineffective or are improperly or negligently administered.

(16) To investigate the tax systems of other states and countries and to formulate and recommend legislation for the better administration of the fiscal laws so as to secure just and equal taxation and improvement in the system of taxation and the economical expenditure of public revenue in the state.

(17) To consult and confer with the governor of the state upon the subject of taxation, the administration of the laws relating thereto and the progress of the work of the board, and to furnish the governor such assistance as he may require.

(18) To transmit to the governor and to each member of the legislature twenty days before the meeting of the legislature a report of the board, showing all the taxable property of the state and the value of the same in tabulated form, with recommendations for improvement in the system of taxation, together with such measures as may be formulated for the consideration of the legislature.

(19) To exercise and perform such further powers and duties as are or may be granted to or imposed upon the board by law.

En. Sec. 8, Ch. 3, L. 1923.

Cited in *State ex rel. Northern Pacific Ry. Co. v. Duncan*, 68 Mont. 420, 424, 219 Pac. 638.

2122.9. Appeal to state board of equalization. Any person, firm or corporation or the board in behalf of the state, or any municipal corporation, aggrieved by the action of any county board of equalization, may appeal to the state board of equalization by filing with the county board a notice of appeal, and a duplicate thereof with the state board of equalization, within five days after the action of the said county board, which notice shall specify the action complained of, and the reasons assigned for such complaint. The state board may require the county board to certify the minutes of its proceedings resulting in such action, and all testimony taken in connection therewith and may hear further testimony and may consider the weight of the testimony already certified, and may reverse, modify or affirm the action complained of.

En. Sec. 9, Ch. 3, L. 1923.

2122.10. Notice of intention to change assessment. When the state board of equalization shall contemplate making any change in the assessment of any property assessed to any particular person (except in a case where an appeal has been filed with the state board) said board shall, before making any change in such assessment, fix a time and place for a hearing thereon, and to give such taxpayer written notice of such hearing by registered letter deposited in the postoffice, postpaid, and directed to said taxpayer at his last known place of residence, at least ten days before the day fixed for such hearing. Such notice shall state the purpose of such hearing and the time and place when the same will be held.

When the state board of equalization shall contemplate raising or lowering the assessed valuation of any one or more classes of property in any county, it shall give notice of its contemplated action to the board of county commissioners of the county in which such class or classes of property is situated, in such manner as it shall deem proper and sufficient, and shall fix a time and place within the county in which such change of assessment is proposed for a hearing thereon; provided, however, that if the change affects one or more classes of property common to more than one county the board shall fix the time and place of hearing so as

to accommodate the counties interested. At the time and place fixed for such hearing any taxpayer or any officer of any municipal corporation interested therein may appear and be heard.

En. Sec. 10, Ch. 3, L. 1923.

2122.11. Assessment of omitted property. Whenever the state board of equalization shall, in any year, discover that any taxable property of any person has not been assessed in such year, or that it has been omitted from taxation during any previous year or years, the state board may assess the same for such year or for such previous years. The order making the assessment shall contain the name of the person to whom the property is assessed, a general description of such property, its assessed valuation, the year for which it is assessed and the county in which the same is assessed. A copy of such order shall be transmitted to the officer of the county, in whose possession the assessment-books of such county are at the time of the making of such order by the board, and such officer shall immediately after receiving such copy, enter the assessment on the tax books of the county for the year in which such order is made, and thereupon such assessment shall have the same force and effect as though originally made by the county assessor; provided, however, that before making any such assessment the state board of equalization shall give the person to whom such property is proposed to be assessed, notice of its intention to make such assessment, and the time and place when a hearing will be had thereon; such notice to be given either by registered letter or personal service at least ten days before the date so fixed for such hearing; and provided further that all assessments of omitted property must be made within three years after the end of the calendar year in which the same should have been assessed.

En. Sec. 11, Ch. 3, L. 1923.

This act, empowering the state board of equalization by section 11 thereof to assess property which theretofore escaped taxation, provided the assessment be made within three years after the end of

the calendar year in which the same should have been assessed, is not open to the objection that it is retroactive in its operation. *Butte & Superior Mining Co. v. McIntyre*, 71 Mont. 254, 229 Pac. 730.

2122.12. Statement of changes to be sent to county clerk. The secretary of the board shall transmit to each county clerk a statement of the changes made by the board in the assessment-book of the county, or any assessment contained therein, which shall be prima facie evidence of the regularity of all proceedings of the board resulting in the action which is the subject matter of the statement.

En. Sec. 12, Ch. 3, L. 1923.

2122.13. Determination of state rate of taxation—Notice of. Between the first and third Mondays of August of each year, the board must determine the rate of state tax to be levied and collected upon the assessed valuation of the property in the state, which, after allowing twelve per cent for delinquencies in the collection of taxes, must be sufficient to raise the specific amount of the revenue required by the legislative assembly for state purposes. The board must immediately thereafter transmit to the county clerk of each county a statement of such rate, and

upon its receipt the county clerk must, in writing, notify the state board of equalization thereof.

En. Sec. 13, Ch. 3, L. 1923.

2122.14. Penalty for refusal to furnish information. If any person shall refuse inspection of any books or records when requested by the board or its authorized agent, or shall refuse or neglect to furnish any information called for by the board in the performance of its official duties relating to the assessment and taxation of property the board shall make such determination and assessment of his or its property as in its judgment appears to be just and equitable, and may add to its assessment thus made not more than twenty per cent thereof as a penalty for such refusal or neglect. The board shall immediately notify the person so assessed of its action, either by registered mail or by personal service of such notice. Such action of the board and the assessment so made shall be final and conclusive unless the party so assessed, (1) shall, within twenty days after receiving such notice, furnish all information requested by the board and show cause before the board why such assessment and penalty should be modified or annulled, when the board shall then from all information presented to it or from its own investigation make such assessment as to it seems just and equitable; or, (2) unless the party assessed shall within sixty (60) days after receiving such notice, appeal to the district court of Lewis and Clark county from the action of the board in making such assessment and imposing such penalty by serving on the board and filing in the office of the clerk of said district court notice of appeal therefrom together with a bond conditioned for the payment of such amount as the judgment of said court may require within thirty (30) days after the entry of such judgment. Upon the hearing of such appeal the court shall determine whether the board of equalization was entitled to inspect such books or records, or was entitled to the information requested by the board, and if the court shall find that the board was entitled to inspect such books or records or was entitled to the information requested by the board, the court shall not change or modify in any manner the assessment as made or the penalty added to such assessment by the board but if the court shall find that the board was not entitled to inspect such book or records, or was not entitled to the information requested by the board, then the court shall enter a judgment changing and modifying the assessment made by the board by striking out the penalty added thereto by the board.

En. Sec. 14, Ch. 3, L. 1923.

2122.15. Duties of public officers. It shall be the duty of all public officers of the state and of any municipality to give to the board information in their possession relating to taxation when required by the board, and to co-operate with and aid the board in every manner in its efforts to secure a fair, equitable and just enforcement of the taxation and revenue laws of the state.

En. Sec. 15, Ch. 3, L. 1923.

2122.16. Hearings, witnesses, contempt, fees and subpoenas. Oaths to witnesses in any investigation by the board may be administered by the secretary or a member of the board. In case any witness shall fail to obey any summons to appear before said board, or shall refuse to testify, or answer any material question, or to produce records, books, papers or documents when required to do so, such failure or refusal shall be reported to the attorney-general, who shall thereupon institute proceedings in the proper district court to compel obedience to any summons or order of the board, or to punish the witness for such neglect or refusal. Any person who shall testify falsely in any material matter, under consideration by the board shall be guilty of perjury and punished accordingly. Witnesses attending shall receive like compensation as witnesses in the district court. Such compensation shall be charged to the proper appropriation for the board.

En. Sec. 16, Ch. 3, L. 1923.

2122.17. Seal. The state board of equalization shall have a seal and such seal shall have the following words engraved thereon, "Board of Equalization of the State of Montana." The board shall authenticate all of its orders, records and proceedings with such seal, and the courts of this state shall take judicial notice of such seal.

En. Sec. 17, Ch. 3, L. 1923.

2122.18. Unconstitutionality or Invalidity. If any clause, sentence, paragraph or part of this act shall for any reason, be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of the act, but shall be confined, in its operation to the clause, sentence, paragraph, or part thereof, directly involved in the controversy in which such judgment shall have been rendered. No caption of any section or set of sections shall in any way affect the interpretation of this act, or of any part thereof.

En. Sec. 18, Ch. 3, L. 1923.

2122.19. Board of equalization to collect certain taxes. The duty of collecting the nonresident inheritance taxes, all gross earning taxes on freight lines, and the following license taxes, to wit: The corporation license tax, taxes on express companies and sleeping-car companies, coal mines, and dealers license taxes, metaliferous mines license tax, cement producers and dealers, license taxes, the gasoline distributors and dealers license tax, the oil producers' license tax and all other license taxes determined by the state board of equalization, the responsibility for collection of which has heretofore been imposed upon the state treasurer are hereby transferred from the state treasurer to the state board of equalization; such collections to be turned over to the state treasurer on the tenth and twenty-fifth day of each and every month, and it is further provided that all duties heretofore imposed by law upon the state treasurer, with reference to the collection and issuance of receipts for any of the above named license taxes, or other taxes above enumerated, are hereby imposed upon the state board of equalization.

En. Sec. 1, Ch. 79, L. 1927.

2122.20. Assessment and apportionment of net proceeds of mines and other property. The state board of equalization must, on or before the third Monday in July of each year, assess the net proceeds of all mines and all property required by law to be assessed by such board, and must apportion to the counties and to the cities, towns, school districts and other taxing districts therein, in the manner provided by law, the total assessment of each of the properties so assessed by such board.

En. Sec. 1, Ch. 180, L. 1925.

2122.21. Transmission statement to county clerk. The state board of equalization must, on or before the fourth Monday in July of each year, transmit to the county clerk of each county to which any such apportionment is made, a statement with reference to each property so assessed and apportioned, containing a description thereof sufficient for identification, and stating the kind and character and the amount, quantity and extent of such property and the value thereof in each city, town, school district and other taxing district within the county, and the total value thereof in the county, and such board must, at the time of transmitting such statement to the county clerk, transmit a copy thereof to the owner of such property or to the person to whom the same is to be assessed.

En. Sec. 2, Ch. 180, L. 1925.

2122.22. Clerk to enter assessment. The county clerk must, on the receipt of each such statement from the state board of equalization, immediately enter on the assessment-books of the county the assessment of such property as contained in such statement, and the same shall constitute the assessment of such property for taxation purposes in such county and in such cities, towns, school districts and other taxing districts of such county; provided that if any city of town in such county shall have provided by ordinance for the collection of its taxes by its own officers the county clerk must immediately after entering such assessment on the assessment-books of the county, transmit a copy of so much of such statement as affects such city or town to the clerk thereof, and such city or town clerk shall on receipt thereof enter such assessment on the assessment-books of such city or town. All such property is taxable upon such assessment at the same rate, by the same officers, and for the same purposes as other taxable property within such counties, cities, towns, school and other taxing districts, respectively, and such taxes must be collected in the same manner and by the same officers as other taxes are collected.

En. Sec. 3, Ch. 180, L. 1925.

2122.23. Procedure for correction or change of assessment. At any time after the assessment of any property by the state board of equalization, and before the fourth Monday in August of the year in which such assessment is made, the owner of such property, or the person to whom the same is assessed, may make written application to the state board of equalization to have such assessment changed or corrected in any respect or particular, or to have the assessment set aside and a reassessment made by such board, which application must set forth specifically the grounds and reasons of [on] which such application is based. On receipt of any such

application the board must make an order fixing a day for hearing the same, giving the applicant at least ten days' notice in writing of the day so fixed for such hearing. And the state board of equalization may, on its own initiative, when it believes that an error or mistake has been made in an assessment made by it, or that it is for the best interests of the state so to do, at any time before the fourth Monday in August of the year in which such assessment is made, make an order for a hearing thereon, giving the owner of or person to whom such property is assessed, at least ten days' written notice of the day so fixed for such hearing, in which said notice and order must be stated briefly, the mistake or error believed to exist by such board and the manner in which it is proposed to correct the same, or wherein the interests of the state require a change to be made in such assessment and the nature of the change proposed therein. On any such hearing, whether held on application of the owner or person to whom the property is assessed or on the initiative of the state board of equalization, such board, after hearing and considering all evidence introduced on such hearing, may make such changes or corrections in such assessment as it may deem necessary and proper, or may set aside such assessment and make a reassessment of such property; provided that all such hearings must be held and all such changes, corrections or reassessments made by the state board of equalization before the second Monday in October. When any change or correction is made in any assessment, or any reassessment is made as the result of such hearing the board of equalization must, within fifteen days thereafter, transmit to the county clerk of each county to which such property has been apportioned, or which is affected by such changes, corrections or reassessments a statement shall be in the same form and contain the same details as the statement required by section 2 of this act. On receipt of any such statement the county clerk must immediately make the necessary and proper changes in the assessment of such property on the assessment-books of the county as shown by such statement, and if any change or correction in such assessment of such reassessment affects any city or town which collects its taxes by its own officer, the county clerk must, after entering the same on the assessment-books of the county, transmit to such city or town clerk so much of such statement as affects such city or town and such city or town clerk must thereupon make such changes and corrections on the assessment-books of such city or town.

En. Sec. 4, Ch. 180, L. 1925.

2123. General powers and duties of board.

Rep. Sec. 19, Ch. 3, L. 1923.

Cited in *Belknap Realty Co. v. Simineo* et al., 67 Mont. 359, 363, 215 Pac. 659;

State v. State Board of Equalization, 67 Mont. 340, 351, 215 Pac. 667.

2124. Appeal to state board of equalization.

Rep. Sec. 19, Ch. 3, L. 1923.

In the absence of fraud or the adoption of a fundamentally wrong principle of assessment by the taxing officers, a taxpayer may not have recourse to the courts in the first instance to rectify an

alleged excessive or erroneous assessment, the remedy for adjustment by boards of equalization being exclusive in the absence of the contingencies referred to. *Belknap Realty Co. v. Simineo*, 67 Mont. 359, 215 Pac. 659.

2125-2130, inclusive. Relating to the state board of equalization.

Rep. Sec. 19, Ch. 3, L. 1923.

CHAPTER 169.

ASSESSMENT OF RAILROADS BY STATE BOARD OF EQUALIZATION.

2131. Assessment of railroads. The president, secretary, or managing agent, or such other officer as the state board of equalization may designate, of any corporation, and each person or association of persons, owning or operating any railroad in more than one county in this state, must, on or before the first day of April of each year, furnish the said board a statement, signed and sworn to by one of such officers, or by the person or one of the persons forming such association, showing in detail for the year ending on the thirty-first day of December, immediately preceding:

(1) The whole number of miles of railroad in the state; and, where the line is partly out of the state, the whole number of miles without the state, and the whole number within the state, owned or operated by such corporation, person, or association.

(2) The value of the roadway, roadbed, and rails of the whole railroad, and the value of the same within the state.

(3) The width of the right of way.

(4) The number of each kind of all rolling stock used by such corporation, person, or association in operating the entire railroad, including the part without the state.

(5) Number, kind and value of rolling stock owned and operated in the state.

(6) Number, kind and value of rolling stock used in the state, but now owned by the party making the returns.

(7) Number, kind and value of rolling stock owned but used out of the state, either upon divisions of road operated by the party making the returns, or by and upon other railroads.

(8) The whole number of side-tracks in each county, including the number of miles of track in each railroad yard in the state.

(9) The number of each kind of rolling stock used in operating the entire railroad, including the part without the state, which must include a detailed statement of the number and value thereof, of all engines, passenger, mail, express, baggage, freight, and other cars, or property owned or leased by such corporation, persons, or association.

(10) The number of sleeping and dining cars not owned by such corporation, person, or association, but used in operating the railroads of such corporation, person, or association in the state, or on the line of the road without the state during each month of the year for which the return is made; also the number of miles each month said cars have been run or operated within and without the state.

(11) A description of the road, giving the points of entrance into and the points of exit from each county, with a statement of the number of miles in each county. When a description of the road shall have once been given, no other annual description thereof is necessary, unless the road shall have been changed. Whenever the road, or any portion of

the road, is advertised to be sold, or is sold for taxes, either state or county, no other description is necessary than that given by, and the same is conclusive upon, the person, corporation, or association giving the description. No assessment is invalid on account of a misdescription of the railroad, or the right of way for the same. If such statement is not furnished as above provided, the assessment made by the state board of equalization upon the property of the corporation, person, or association failing to furnish the statement is conclusive and final.

(12) Also showing in detail for the year preceding the first of January:

- (a) The gross earnings of the entire road;
- (b) The gross earnings of the road within the state, and where the railroad is let to other operators, how much was derived by the lessor as rental;
- (c) The cost of operating the entire road, exclusive of sinking fund, expenses of land department, and money paid to the United States;
- (d) Net income for such year, and amount of dividend declared.
- (e) Capital stock authorized;
- (f) Capital stock paid in;
- (g) Funded debt;
- (h) Number of shares authorized;
- (i) Number of shares of stock issued.

(13) Any other facts the state board of equalization may require.

En. Sec. 1, Ch. 7, L. 1925.

For text treatment of this subject see vol. 24 Cal. Jur. 399.

2134. County commissioners to enter assessment order.

Rep. Sec. 5, Ch. 180, L. 1925.

CHAPTER 170.

ASSESSMENT OF CERTAIN TELEGRAPH, TELEPHONE AND ELECTRIC POWER PROPERTIES BY STATE BOARD OF EQUALIZATION.

2145. Order of board of commissioners declaring valuations.

Rep. Sec. 5, Ch. 180, L. 1925.

CHAPTER 171.

LEVY OF TAXES.

2147. The Levy.

Cited in Butte Electric Ry. Co. v. McIntyre, 71 Mont. 21, 23, 227 Pac. 61.

2148. State tax levy of three and one-half mills—Support of university of Montana.

The agricultural experiment station and the agricultural extension service are not parts of the agricultural college or component parts of the University of Montana; hence appropriations made for them cannot be charged to receipts from the mill and a half levy for state purposes authorized by this section for the maintenance of the University. State ex rel.

Jones v. Erickson, 75 Mont. 429, 244 Pac. 287.

The title of this act is not open to the objection that it contains more than one subject, contrary to the provisions of section 23, article V, of the state constitution. State ex rel. Jones v. Erickson, 75 Mont. 429, 244 Pac. 287.

(NOTE.—The holdings of the court on the various constitutional questions involved in the above case are annotated under the constitution.)

2149. Rate of taxation fixed by state board.

Sections 2149, 2150 were cited in *Butte Electric Ry. Co. v. McIntyre*, 71 Mont. 21, 23, 227 Pac. 61.

2152. Tax operates as a judgment or lien.

This section, providing that "every lien created by this title" (relating to taxation) has the force and effect of an execution against the personal property of a delinquent taxpayer, has reference only to the collection of taxes for state and county government purposes and has no application to special taxes or assess-

ments levied by an irrigation district for the payment of its bonds or interest thereon. *State v. Nicholson*, 74 Mont. 346, 240 Pac. 837.

For text treatment of this subject see vol. 24 Cal. Jur. 217.

2153. Lien of personal property taxes. Every tax due upon personal property is a prior lien upon such personal property assessed, which lien shall have precedence over any other lien, claim, or demand, and every tax due upon personal property is a lien upon the real property of the owner thereof, from and after 12 M. of the first Monday in March in each year; provided, however, that any owner of a mortgage on real estate upon which personal property taxes are by this act made a lien and where the owner of such real estate and personal property has failed to pay taxes due upon such real estate and personal property for one or more years, may file with the county assessor of the county in which such property is located a written request to have the personal property and real estate of the owner separately assessed. Such request must be made by registered mail at least ten days prior to the first Monday in March in the year for which property is assessed. Upon receipt by the assessor of such request it is hereby made the duty of the county assessor to make a separate assessment of real and personal property of the owner thereof and such personal property taxes shall not be a lien upon the real estate so mortgaged of the owner thereof and the said personal property taxes shall be collected in the manner provided by law for other personal property.

Amd. Sec. 1, Ch. 113, L. 1927.

Under this section and section 2154, delinquent taxes do not become a lien on the property against which originally assessed, immediately on delinquency, but on the first Monday in March of each

year. *County of Hill v. County of Liberty*, 62 Mont. 15, 203 Pac. 500.

For text treatment of this subject see vol. 24 Cal. Jur. 218.

2154.1. Filing notice federal tax liens. Notices of liens for taxes payable to the United States of America and certificates discharging such liens shall be filed in the office of the county clerk of the county or counties in this state, within which the property subject to such lien is situated. No fee shall be charged for such filing.

En. Sec. 1, Ch. 8, L. 1927.

2154.2. Index of tax liens. When a notice of such lien is filed, the county clerk shall forthwith enter the same in an alphabetical federal tax lien index, showing on one line the name and residence of the taxpayer named in such notice, the collector's serial number of such notice, the date and hour of filing, and the amount of tax with the interest and

penalties; he shall file and keep all original notices so filed in numerical order in a file or files and designated, federal tax lien notices.

En. Sec. 2, Ch. 8, L. 1927.

2154.3. Certificate of discharge. When a certificate of discharge of any tax lien issued by the collector of internal revenue or other proper officer, is filed in the office of the county clerk, where the original notice of lien is filed, said county clerk shall enter the same with date of filing in said federal tax lien index, on the line where notice of the lien so discharged is entered, and permanently attach the original certificate of discharge to the original notice of lien.

En. Sec. 3, Ch. 8, L. 1927.

2154.4. Furnishing of files. Said federal tax lien index and file or files for said federal tax lien notices shall be furnished to the county clerk of each county in this state, in the manner now provided by law for the furnishing of books in which deeds are recorded.

En. Sec. 4, Ch. 8, L. 1927.

2154.5. Purpose of act. This act is passed for the purpose of authorizing the filing of notices of liens in accordance with the provisions of section 3186 of the Revised Statutes of the United States, as amended by the act of March 4, 1913, 37 Statutes at Large, page 1016, and any acts or parts of acts amendatory thereof.

En. Sec. 5, Ch. 8, L. 1927.

2154.6. Interpretation of act. This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

En. Sec. 6, Ch. 8, L. 1927.

2154.7. Act how cited. This act may be cited as the uniform federal tax lien registration act.

En. Sec. 7, Ch. 8, L. 1927.

CHAPTER 172.

DUTIES OF COUNTY CLERK IN RELATION TO TAXES.

2159. To follow directions of state board of equalization.

Sections 2159–2161 were cited in Butte
Electric Ry. Co. v. McIntyre, 71 Mont.
21, 23, 227 Pac. 61.
This and the following section were

cited as sections 2607, 2608, Revised
Codes, in Anderson v. McClenethan, 62
Mont. 387, 391, 205 Pac. 230.

2161. Delivery assessment-book and affidavit. On or before the third Monday of October he must deliver the original assessment-book to the county treasurer, with an affidavit attached thereto, and by him subscribed as follows:

“I,, county clerk of the county of, do swear that I received the assessment-book of the taxable property of the county from the county assessor with his affidavit thereto affixed, and

that I have corrected it and made it conform to the requirements of the county and state board of equalization; that I have reckoned the respective sums due as taxes, and have added up the columns of valuations, taxes and acreage, as required by law, and the said assessment-book to which this affidavit is affixed is full, true and correct, and made in the manner prescribed by law."

Amd. Sec. 9, Ch. 96, L. 1923.

Since under this section the date on which the county assessment-roll must be completed was changed from the first Monday of October to the third Monday of that month, the board of county commissioners to which a petition for the creation of a new county had been submitted on October 10, 1923, in determining whether the proposed new county was possessed of property of the assessed valuation of at least four million dollars as shown by the last preceding assessment, did not err in taking into

consideration the assessment-roll for 1922. *Garry v. Martin*, 70 Mont. 587, 227 Pac. 573.

Cited as section 2609, Revised Codes, in *State ex rel. Bullock v. District Court*, 62 Mont. 600, 601, 205 Pac. 955.

This section and section 2164 were cited as sections 2609-2612, Revised Codes, in *Anderson v. McClenethan*, 62 Mont. 387, 392, 205 Pac. 230.

For text treatment of this subject see vol. 24 Cal. Jur. 213.

2163. Clerk to charge treasurer. On delivering the original assessment-book to the county treasurer, as provided in section 2161, the county clerk must charge the treasurer with the full amount of taxes levied.

Amd. Sec. 10, Ch. 96, L. 1923.

2165. Clerk to charge and credit collectors. The county clerk, if the original assessment-book or the delinquent tax list is transferred from one collector to another, must credit the one and charge the other with the amount then outstanding on the tax-book.

Amd. Sec. 11, Ch. 96, L. 1923.

2165.1. Special poll tax—Collection and receipt. Whenever any special poll tax shall be imposed as provided by the laws of this state, whether for road, poor or any other purpose, it shall be the duty of the county clerk to have suitable receipts for the same printed and to deliver said receipts to the county treasurer charging him with the same and it shall be the duty of the county treasurer to proceed to collect such poll tax as provided by law. The receipts herein provided for shall be bound in book form and shall be printed and written in triplicate. One copy of such receipt shall be delivered to the person paying the tax, one copy of each and all receipts shall be turned over to the county clerk at the end of each month to be preserved in his office; and one copy of each and all such receipts shall be permanently preserved in the office of the treasurer.

En. Sec. 1, Ch. 81, L. 1923.

CHAPTER 173.

COLLECTION OF PROPERTY TAXES—TAX SALES—REDEMPTIONS.

2169. Treasurer to publish notice of delinquency. Within ten days after the receipt of the assessment-book, the county treasurer must publish a notice specifying:

1. That one-half of all taxes levied and assessed will be due and payable before six o'clock P. M. on the thirtieth day of November next thereafter, and that unless paid prior thereto the whole amount of said taxes will be delinquent and will draw interest at the rate of one per cent per month from and after such delinquency, and ten per cent will be added to the amount thereof as a penalty, and that one-half of all taxes levied and assessed will be due and payable on or before six o'clock P. M., on the thirty-first day of May next thereafter, and that unless paid prior to said date said taxes will be delinquent and will draw interest at the rate of one per cent per month from and after such delinquency, and five per cent will be added to the amount thereof as a penalty.

2. The time and place at which payment of taxes may be made; and he must send to the last known address of each taxpayer a postcard or other written notice, postage prepaid, showing the amount of taxes due the current year, and the amount due and delinquent for other years; but any failure to give either notice will not affect the legality of the tax.

Amd. Sec. 2, Ch. 96, L. 1923.

The title to this act, "An act to fix the time and method of collecting taxes and interest thereon," sufficiently expresses the subject of the act—authorizing the semi-annual payment of taxes—to meet the requirements of section 23, article V, of the constitution. *Thomas v. City of Missoula et al.*, 70 Mont. 478, 226 Pac. 213.

The general repealing clause found in this act repeals subdivision 2 of section 5039 and section 5203 as well as ordinances enacted in pursuance of said sections. *Thomas v. City of Missoula et al.*, 70 Mont. 478, 226 Pac. 213.

In the collection of tax or assessment levied by an irrigation district for the payment of the interest on bonds issued

by it, the county treasurer is not authorized to seize and sell personal property of a delinquent owner of lands within the district, but must proceed in the manner prescribed by chapter 173, part III of the Revised Codes of 1921, as amended by chapter 96 of the Laws of 1923 for the collection of state and county taxes made a lien upon real property. *State v. Nicholson*, 74 Mont. 346, 240 Pac. 837.

Cited in *Butte Electric Ry. Co. v. McIntyre*, 71 Mont. 21, 23, 227 Pac. 61; *County of Hill v. County of Liberty*, 62 Mont. 15, 17, 203 Pac. 500.

For text treatment of this subject see vol. 24 Cal. Jur. 256.

2169.1. Taxes, when payable—Interest on delinquent. All taxes levied and assessed in the state of Montana shall be payable as follows: One-half of the amount of such taxes shall be payable on or before 6 o'clock P. M. on the thirtieth day of November of each year and one-half on or before 6 o'clock P. M. on the thirty-first day of May of each year; provided, that unless one-half of such taxes are paid on or before 6 o'clock P. M. on the thirtieth day of November of each year, then, and in that event, the whole amount of taxes so levied and assessed shall become delinquent, and all delinquent taxes shall draw interest at the rate of one per cent per month from the time they are first delinquent until paid. All taxes not paid on or before 6 o'clock P. M. of the thirty-first day of May of each year will be delinquent, and will draw interest at the rate of one per cent per month until paid. A penalty of five per cent shall be added to all delinquent taxes.

En. Sec. 1, Ch. 96, L. 1923.

This section, providing for the semi-annual payment of "all taxes levied and assessed in the state," applies to city taxes as well as to county taxes. *Thomas v. City of Missoula et al.*, 70 Mont. 478, 226 Pac. 213.

Assessment for special improvement fall within the meaning of "taxes" as used in this act, authorizing the semi-annual payment of taxes. *Thomas v. City of Missoula et al.*, 70 Mont. 478, 226 Pac. 213.

2171. Treasurer to note date and amount of payment. The county treasurer must note the date and the amount of the payment of any tax in the assessment-book opposite the name of the person paying.

Amd. Sec. 3, Ch. 96, L. 1923.

2172.1. County treasurer to collect and receipt for irrigation and drainage district taxes. It shall be the duty of the county treasurer of each county in which any irrigation or drainage district is located, in whole or in part, to collect and receipt for all taxes and assessments, levied by any such district, in the same manner and at the same time, and on the same receipt, as is required in the collection of taxes upon real estate for county purposes. Such county treasurer shall not collect or receive or receipt for any taxes or assessments levied for county purposes upon real estate situated wholly or in part within any irrigation or drainage district upon which an assessment for the purposes of such irrigation or drainage district has been levied, unless the said assessment levied for such irrigation or drainage district purposes be paid at the same time.

En. Sec. 1, Ch. 71, L. 1923.

2174. Quarterly settlement by county treasurer. On the first Monday of January, April, July and October of each year the county treasurer must settle with the board of county commissioners for all moneys collected and on said days must deliver to said board of county commissioners a statement under oath showing: An account of all receipts and disbursements since the last quarterly settlement together with sworn affidavits verifying the reconciliation of the balance on hand in the county treasury. After the approval of such statement and the accompanying affidavits, one copy of such report shall be filed with the county clerk of said county, one copy shall be retained by the county treasurer and one copy shall be transmitted to the state examiner.

Amd. Sec. 4, Ch. 96, L. 1923; Amd. Sec. 1, Ch. 3, L. 1925. For text treatment of this subject see vol. 24 Cal. Jur. 262.

2175. When taxes become delinquent—Penalty.

Rep. Sec. 12, Ch. 96, L. 1923.

Cited as section 2622, Revised Codes, in *Anderson v. McClenethan*, 62 Mont. 387, 390, 205 Pac. 230.

2176. Report by county treasurer to clerk. On the third Monday of December and on the third Monday of June of each year the county treasurer must make a report to the county clerk in detail, showing the amount of taxes collected and a complete delinquent list of all persons and property then owing taxes, and the county clerk shall compare such report with the books of the county treasurer, and shall keep a record of such report in his office.

Amd. Sec. 5, Ch. 96, L. 1923.

This and section 2177 were cited as sections 2623, 2624, Revised Codes, in *An-*

derson v. McClenethan, 62 Mont. 387, 392, 205 Pac. 230.

2180. Treasurer charged with delinquent taxes. After settlement with the county treasurer, as prescribed herein, the county clerk must charge the treasurer then acting with the amount of taxes then due on the delinquent tax list, and within three days thereafter deliver the list, duly certified, to the county treasurer.

Amd. Sec. 6, Ch. 96, L. 1923.

2181. Statement to be transmitted to the state board of equalization by the county clerk. Within ten days after each settlement the county clerk must transmit by mail a statement to the state board of equalization, in such form as it may require, of each kind of property assessed and delinquent, and the total amount of delinquent taxes.

Amd. Sec. 7, Ch. 96, L. 1923.

2182. Publication of notice of tax sale. On or before the last Monday of December and the last Monday of June of each year the county treasurer and city treasurer must publish in the manner and for the time prescribed by sections 2184, 2185 and 2186 of the Revised Codes of Montana of 1921, a notice specifying:

1. That at a given time and place (to be designated in said notice) all property in the county, or city respectively, upon which delinquent taxes are a lien will be sold at public auction, unless prior to said time said delinquent taxes, together with all interest, penalties, and costs due thereon are paid:

2. That a complete delinquent list of all persons and property in the county, now owing taxes, is on file in the office of the county treasurer, or city treasurer, and is subject to public inspection and examination.

Amd. Sec. 8, Ch. 96, L. 1923.

For text treatment of this subject see vol. 24 Cal. Jur. 273.

This section and sections 2184 and 2186 were cited as sections 2629-2631, 2633, Revised Codes, in *Anderson v. McClenethan*, 62 Mont. 387, 392, 205 Pac. 230.

2183. Notice of sale appended to delinquent tax list.

Rep. Sec. 12, Ch. 96, L. 1923.

2188. Additional sum collected to defray costs.

Rep. Sec. 12, Ch. 96, L. 1923.

2191. Designations of portions to be sold, purchase of least quantity or interest—Sale to county—Title. The owner or person in possession of any real estate offered for sale for taxes due thereon, may designate, in writing to the county treasurer, prior to the sale, what portion of the property he wishes sold, if less than the whole, but if the owner or possessor does not, then the treasurer may designate it, and the person who will take the least quantity of the land, or in case an undivided interest is assessed, then the portion of interest, and pay the taxes and interest and costs due, including fifty cents to the treasurer for the duplicate certificate of sale, is the purchaser. But in case there is no purchaser in good faith for the same, as provided in this chapter, on the first day that the property is offered for sale, then when the property is

offered thereafter for sale and there is no purchaser in good faith for the same, the whole amount of the property assessed must be struck off to the county as the purchaser, and the duplicate certificate delivered to the county treasurer and filed by him in his office. No charge must be made for the duplicate certificate when the county is a purchaser; and in such case the county treasurer must make an entry, "sold to the county," on the assessment-book, opposite the tax, and he must be credited with the amount thereof in the settlement. The county treasurer is hereby authorized to assign the interest of the county in any property purchased at a tax sale upon the payment of the amount for which the property was sold with interest thereon from the date of sale, at the rate of twelve per cent per annum and the amount of all taxes then due upon said property. All certificates of sale heretofore issued to any county on the purchase by such county of real property sold at any delinquent tax sale and which certificates of sale are now held by such county, are hereby declared to be valid and subsisting certificates of sale for all purposes, notwithstanding any irregularities in the manner of publishing the delinquent tax list, or in holding such sale, or in selling such property or in the issuance of such certificates of sale, or in the form thereof, provided the taxes for which such property was sold were taxes authorized by law to be assessed against such property, and were lawfully assessed against the same and have not been paid, and provided further that such property was correctly described in a notice of delinquent tax sale which was actually published at least one time in a newspaper of general circulation in the county in which such property is situated.

Amd. Sec. 1, Ch. 46, L. 1923.

2197.1. Refund of money to purchasers of certain tax titles. Where a sale of land for delinquent taxes thereon, is declared void by judgment of court for irregularity in the assessment, levy or sale, the money paid by the purchaser at the sale, or by any assignee of the state, county, city, town, or district, upon taking the assignment, shall, with interest at the rate of eight (8) per cent per annum, from the date of such payment, be refunded to the purchaser or owner of such tax certificate, upon the order of the chairman of the board of county commissioners of the county in which such lands lie; and the county shall then have a lien upon said property for the legal taxes on said property for the year in which it was sold together with the penalty and interest, and so much of so much money as has been paid to the state, city, town or district by the treasurer of such county shall be charged to the state, city, town or district by such treasurer, and deducted from the next money due the state, city, town or district respectively on account of taxes paid or collected; provided, further, that purchasers of such certificate or owners thereof by assignment, where sales have been made by cities or towns, which by resolution or ordinance collect their own taxes, instead of having the same collected by the county treasurer, shall be reimbursed, in similar manner and in similar circumstances, out of the city or town treasury, upon order of the mayor, with proper changes and deductions against the respective funds of the said city or town, upon the next collection of taxes by said city or town; and, provided, further, that if such

purchaser or owner of such certificate, after such purchase or assignment from the state, county, city, town or district, have paid the taxes, penalty and interest upon such piece or parcel of land, he or his assignee thereof, shall have a lien upon such piece or parcel for the amount of taxes, penalty and interest so paid, with interest as now provided by law to be collected upon delinquent taxes, which lien shall have the same priority as is now provided by law; and if he is in possession of such piece or parcel of land, he shall not be ejected therefrom until such amount and interest and penalty shall be paid.

En. Sec. 1, Ch. 131, L. 1927.

2200.1. Remission 1922 tax delinquencies. No property upon which taxes of any sort have been levied in the state of Montana for the year 1922 shall be sold for such delinquent taxes until the first day of October, 1923.

En. Sec. 1, Ch. 1, L. 1923.

2200.2. Publication notice postponement. All county and city treasurers are required to publish a notice once in the official newspapers in their respective counties or cities to the effect that the time of such tax sale in their respective counties or cities is postponed until the first day of October, 1923, and all existing laws of the state relative to the place and manner of sale of property for delinquent taxes shall apply to and cover said tax sales made on said date, provided, that no further publication of delinquent tax lists shall be made.

En. Sec. 2, Ch. 1, L. 1923.

2200.3. Remission and refund penalties—Interest rate. That the penalty of ten (10) per cent heretofore added to all taxes delinquent for the year 1922 is hereby remitted until the first day of October, 1923, at which time such penalty shall be added to all such taxes then remaining unpaid; provided that in all cases where such penalty has been paid on taxes delinquent for the year 1922, such penalty shall be refunded by the board of county commissioners or the city council, as the case may be, upon claims filed therefor in the same manner as other claims are filed, as required by law; provided further, that no such claim for refund shall be allowed on any claim filed after June 1, 1923; provided further, that all delinquent taxes for the year 1922 shall bear interest at the rate of one per cent per month from November 30, 1922, until paid.

En. Sec. 3, Ch. 1, L. 1923.

NOTE.—In the case of *Sanderson v. Bateman*, 78 Mont. 235, 253 Pac. 1100, the court held unconstitutional chapter 63, L. 1923, providing for relieving delinquent taxpayers of penalties and interest on delinquent taxes.

2209. Notice of application for tax deed.

The provision of this section, requiring the purchaser of property sold for delinquent taxes to serve upon the owner or occupant thereof the written notice specified therein, thirty days before applying for the deed, is as binding upon

a county as it is upon an individual. *Harrington v. McLean*, 70 Mont. 51, 223 Pac. 912.

Where the affidavit of a purchaser of real property at a delinquent tax sale, upon asking for a deed, recited that the

property was occupied, but failed to state by whom or that the notice required by this section, had been served upon such occupant, the deed issued thereon was void. *Harrington v. McLean*, 70 Mont. 51, 223 Pac. 912.

2209.1. Municipalities may procure tax deed how. Whenever a county, city or town has become the purchaser of property sold for delinquent taxes, and is the holder of the certificate of sale when the time for redemption expires, the board of county commissioners, city or town council or commission, at any time thereafter deemed proper, may order and direct the county clerk, city or town clerk, to apply to the county, city or town treasurer, as the case may be, for the issuance to the county, city or town, of a tax deed for such property, and it shall then be the duty of the county clerk, city or town clerk, to give or post and cause to be published the proper notice of the application for such tax deed and to make the proper proof thereof, all in the manner required by section 2209, Revised Codes of Montana 1921.

En. Sec. 1, Ch. 92, L. 1927.

2209.2. Validation of certain tax deeds. All tax deeds heretofore issued to counties, cities and towns, if in all other respects issued in conformity with law, shall be deemed and held to be legal, valid and subsisting deeds and sufficient in law to convey the legal title to the premises therein described to the county, city or town to which issued, and shall be received in evidence in all of the courts of this state, notwithstanding the fact that notice of application for any such deed was given or posted and caused to be published and proofs thereof made by the county, city or town treasurer, or by some person acting at his direction, or by some other person acting in behalf of the county, city or town, provided such notice was actually given or posted and caused to be published and proof thereof made by some officer of the county, city or town, or by some person acting in behalf of such county, city or town.

En. Sec. 2, Ch. 92, L. 1927.

2210. Redemption from tax sales.

Cited in *Thwing v. Weiser et al.*, 65 Mont. 28, 31, 210 Pac. 750.

2211. Redemption from tax sales by mortgagees and lienholders—Apportionment. Whenever any person, firm, copartnership, corporation, or association shall desire to redeem from a tax sale and pay all subsequent taxes upon any lots, piece or parcel of real estate, which said person, firm, copartnership, corporation, or association shall own or hold a mortgage or other lien against or have any interest in such property, it shall be the duty of the county treasurer of the county in which such real estate is situated to permit such redemption and payment; and in case the said real estate shall have been assessed or sold, together with other real estate, or in case the tax assessed against any other property shall be a lien thereon, then it shall be the duty of said county treasurer to compute and apportion the tax that should have properly been assessed against the said real estate sought to be redeemed, and upon which the taxes are sought to be paid, the same as if said property had been sepa-

rately assessed. Any personal property tax which is a lien upon said real estate shall be likewise computed and apportioned on the same percentage basis as the tax assessed against the real estate is apportioned.

Amd. Sec. 1, Ch. 48, L. 1923.

2212. No deed to issue under certain circumstances.

The affidavit required by this section, show whether the property was occupied to be filed by a purchaser of property, or not, and if occupied, that the person at a delinquent tax sale who asks for upon whom the notice was served was a tax deed must be in strict compliance at the time occupying it. *Harrington v. McLean*, 70 Mont. 51, 223 Pac. 912.

2214. Of what deed is evidence—Action to annul. Such deed, duly acknowledged or proved is (except as against fraud) conclusive evidence of all other proceedings from the assessment by the assessor up to the execution of the deed, both inclusive, and no action can be maintained to set aside or annul a tax deed or to assert a title hostile to a tax deed upon any ground whatever, whether on the ground that said deed, or any prior proceeding, was irregular or void, other than that the deed was void because no taxes were delinquent on said lands, or because redemption had been made from said tax sale, unless the action is commenced within one year from and after the date of the issuance of said tax deed; provided that any such action as regards any tax deed heretofore issued shall be barred unless instituted within one year from and after the passage and approval of this act; and, provided further that in any action now pending, or hereafter brought to set aside or annul any tax deed, or to quiet title, or to determine the rights of such purchaser, including the county, or his successors, to real property claimed to have been acquired by reason of tax proceedings or a tax sale, the purchaser or his successor upon filing an affidavit may obtain from the court an order directed to the person claiming to own the property, or to have any interest in or lien upon said property or a right to redeem the same, or claiming rights hostile to the tax title (which said person is herein, for convenience, called the true owner), commanding him to deposit in court, to the use of the tax purchaser or his successors, the amount of all taxes, interest and penalties which would have accrued if said property had been regularly and legally assessed and taxed as the property of said true owner and sold for delinquent taxes and was about to be redeemed by him, and the amount of all sums reasonably paid hereafter by said purchaser or his successors after three years from the date of said tax sale in preserving said property or in making improvements thereon while in possession thereof, as the total amount of said taxes, interest, penalties and improvements is alleged by the plaintiff and shall appear in said order, or to show cause on a date to be fixed in said order, not exceeding thirty days from the date thereof, why such payments should not be made. Said affidavit shall set forth the place of residence of said true owners and whether they are in the state of Montana, if known to the plaintiff, or that the same is not known to the plaintiff. Said order shall be filed with the clerk and a copy served personally upon all persons shown in said affidavit to be residents of and in the state of Montana, and jurisdiction shall be acquired over all other persons by publishing the same once in a newspaper

in the county, and by posting the same in three public places in the county at least ten days before the day fixed for the hearing and by leaving a copy with the county treasurer. Upon the hearing of the order to show cause the court shall have jurisdiction to determine said amount and to make an order that the same be paid into court within a given time, not exceeding thirty days after the making of said order. If such amount, when so determined, shall not be paid within the time fixed by said court, then said true owner shall be deemed to have waived any defects in the tax proceedings and any right of redemption, and thereupon, irrespective of any irregularities, defects or omissions or total failure to observe any of the provisions of the statutes of Montana regarding the assessment, levying of taxes, or sale of property for taxes, and the giving of notices, including notices of redemption, or concerning tax deeds, whether or not such omissions or failures makes said proceedings void (other than that the taxes were not delinquent or have been paid), the title of such true owner shall not be quiet as against said purchaser or his successors, and a decree shall be entered in said action quieting the title of said purchaser or his successor as against said true owner. If such payment shall be made into court, and said true owner shall be successful in said action and said tax proceeding shall be held void, said sum shall be paid to the purchaser or his successors. If said true owner shall not be successful in said action and the title of said purchaser or his successors shall be sustained, said money shall be returned to said true owner. In actions to quiet title, when brought by the purchaser or the county, or their successors, several tracts of land contiguous or noncontiguous, and whether owned by different defendants, may be set forth in one complaint, and all persons claiming any title to or interest in or lien upon any of said premises, or any part thereof, although their said claims are independent and not in common, and do not cover the same tracts, may be joined as defendants. The procedure in said action shall follow, as near as may be, the procedure specified in sections 9479 to 9488. In the final judgment the court shall also determine the rights growing out of any additional taxes on said property accruing or being paid by either party during the pendency of said suit and, in said suit, the court shall have complete jurisdiction to fix the amount of taxes which should have been paid and to determine all questions necessary in granting full relief, including the power, in appropriate cases to order any assessor or other tax officer to make and certify to the court a corrected or new assessment or to do any other act or thing necessary to enable the court to do complete justice in the premises. Errors may be reviewed on appeal from the final judgment.

Amd. Sec. 1, Ch. 85, L. 1927.

For text treatment of this subject see vol. 24 Cal. Jur. 379.

2215. Title conveyed by deed. All deeds heretofore or hereafter executed more than three years after any tax sale shall be deemed to convey to the grantee the absolute title to the lands described therein as of the date of the expiration of three years following the date of sale, including all the right, title, interest, estate, lien, claim and demand of the state of Montana, and of the county, in and to said real estate, and including

the right of, if said tax deed or tax sale, or any of the tax proceedings upon which said deed may be based, shall be attacked and held irregular or void, to recover the unpaid taxes, interest and penalties which would accrue if said tax proceedings had been regular and it was desired to redeem said property, free of all encumbrances, except the lien for taxes which may have attached subsequent to the sale, and except when the land is owned by the United States or the state, in which case it is prima facie evidence of the right of possession accruing as of the date of the expiration of such period for redemption. If any tax deed or deed purporting to be such has been or shall be issued more than three years and thirty days after any tax sale or attempted tax sale, the grantee may publish in any newspaper in the county published at the county seat or if none, in any other newspaper once a week for two weeks a notice entitled "a notice of claim of a tax title" which shall set forth a description of any property claimed to have been acquired by a tax deed, an estimate of the amount due thereon for taxes, interest and penalties, and a statement that for further particulars reference is made to the records in the office of the county treasurer; also the name of the person claiming to have obtained a tax deed to said property and the name of the person in whose name said property was assessed or taxed and a statement that demand is made that such person shall, within (30) thirty days after the first publication of said notice, pay to said claimant or to the county treasurer to his use the amount of the taxes, interest and penalties as the same may appear in the records of the county treasurer or bring a suit to quiet his title or to set aside said tax deed or deeds. Any mistake in the amount or in any name specified in said notice shall not invalidate the same. If, within said period of (30) thirty days, said taxes, interest, and penalties shall not have been paid or said suit brought, all defects in the tax proceedings and any right of redemption shall be deemed waived and thereupon, irrespective of any irregularities, defects, or omissions, or total failures to observe any of the provisions of the statutes of Montana regarding the assessment, levying of taxes, or sale of property for taxes, and the giving of notices including notices of redemption, whether or not such omissions or failures make said proceedings void (other than that the taxes were not delinquent or have been paid) the title to said property described in said notice and in the tax deed shall be valid and binding.

Amd. Sec. 2, Ch. 85, L. 1927.

For text treatment of this subject see vol. 24 Cal. Jur. 387.

2235. Sale of Unredeemed property by county commissioners. Whenever the county has become, or attempted to become, the purchaser of any property, real or personal, sold for delinquent taxes, and said property has not been redeemed by the person entitled to do so, and a tax deed or instrument purporting to convey title has been issued to the county, whether the same was regular or irregular, valid or invalid, the board of county commissioners may, at any time, by an order entered upon the minutes of its proceedings, sell such property at public auction at the front door of the courthouse; provided, however, that thirty (30) days notice of such sale shall be given by the board of county commissioners

by publication in a newspaper printed in the county and by posting copies of such notice in at least five public places in the county; and provided further, that no sale of any property shall be made for a price less than the fair market value thereof, as determined and fixed by the board of county commissioners at the time of making the order for sale, and which value shall be stated in the notice of sale.

Such sale may be made for cash, or, in the case of real property, on such terms as the board of county commissioners may approve; provided, however, that if such sale is made on terms at least twenty per cent (20%) of the purchase price shall be paid in cash at the date of sale, and the remainder may be paid in installments extending over a period of not to exceed five years, and all such deferred payments shall bear interest at the rate of six per cent per annum.

If a sale is made on terms the chairman of the board of county commissioners shall execute a contract containing such terms as shall be provided by a uniform contract prescribed by the board of equalization. Upon payment of the purchase price in full, together with all interest which may become due on any installments or deferred payments, the chairman of the board of county commissioners shall execute a deed to the purchaser, or his assigns, or such other instrument as will be sufficient to convey all of the title of the county in and to the property so sold.

On the first Monday in March following the execution of such contract, or deed, as the case may be, the property shall be subject to taxation in the name of the purchaser or his assignee, and the purchaser, or his assignee shall thereafter pay all taxes and assessments lawfully laid against such property.

All sales heretofore made, or attempted to be made, by counties of property purchased for taxes, and the deeds to purchasers from such counties, whether or not irregular or void for any reason, or because of any irregularity or failure to follow the directions or comply with the provisions of any statute relating to such deeds, or relating to the taxation or sale of such property for taxes, or the time or manner of redeeming property or of securing a tax deed, are hereby confirmed, and said deeds and any deed or contract executed under this section shall vest in the purchaser, as of the date of said deed or contract, all the right, title, interest, estate, lien, claim and demand of the state of Montana, and of the county, in and to said real estate, including the right to recover unpaid taxes, interest and penalties if the tax sale or any of the tax proceedings or tax deed shall be attached and held irregular or void.

The proceeds of every such sale shall be paid over to the county treasurer who shall apportion and distribute the same in the following manner:

1. If such proceeds are in excess of the aggregate amount of all taxes and assessments accrued against such property for all funds and purposes, without penalty or interest, then so much of such proceeds shall be credited to each fund or purpose, as the same would have received had such taxes been paid before becoming delinquent, and all excess shall be credited to the general fund of the county.

2. If such proceeds shall be less in amount than the aggregate amount of all taxes and assessments accrued against such property for all funds,

and purposes, without penalty or interest, then such proceeds shall be prorated between such funds and purposes in the proportion that the amount of taxes and assessments accrued against such property for each such fund or purpose bears to the aggregate amount of taxes and assessments accrued against such property for all such funds and purposes.

Amd. Sec. 3, Ch. 85, L. 1927.

2235.1. Repealing clause—Proviso. All acts and parts of acts in conflict herewith are hereby repealed; provided, however, that this act is not intended, and nothing herein shall be deemed to be intended, either to repeal or displace chapter 89 of the laws of the Nineteenth Legislative Assembly of the state of Montana.

En. Sec. 4, Ch. 85, L. 1927.

CHAPTER 174.

COLLECTION OF PERSONAL PROPERTY TAXES NOT A LIEN ON REAL ESTATE.

2238. Duty of assessor. It shall be the duty of the assessor, upon discovering any personal property in the county the taxes upon which are not in his opinion a lien upon real property sufficient to secure the payment of such taxes, to immediately, and in any event not more than ten days thereafter, make a report to the treasurer setting forth the nature, amount and assessed valuation of such assessed property, where the same is located, and the name and address of the owner, claimant or other person in possession of the same. The county assessor shall file with the state board of equalization a duplicate of each of such reports so made to the county treasurer.

Amd. Sec. 1, Ch. 102, L. 1923; Amd. Sec. 1, Ch. 24, L. 1925.

For text treatment of this subject see vol. 24 Cal. Jur. 153.

2239. Duty of treasurer. The county treasurer must collect the taxes on all personal property, and in the case provided for in the preceding section, it shall be the duty of the treasurer immediately upon receipt of such report from the assessor to notify the person or persons against whom the tax is assessed that the amount of such tax is due and payable at the county treasurer's office. The county treasurer must at the time of receiving the assessor's report, and in any event within thirty days from the receipt of such report, levy upon and take into his possession such personal property against which a tax is assessed and proceed to sell the same, in the same manner as property is sold on execution by the sheriff, and the county treasurer may for the purpose of making such levy and sale, designate and appoint the sheriff as his deputy, and such sheriff shall be entitled to receive the same fees, as entitled in making a seizure and sale under execution. For the purpose of determining the taxes due, on such personal property, the treasurer must use the levy made during the previous year, if the levy for the current year has not yet been made. The county treasurer and his sureties are liable on his official bond for all taxes on personal property remaining uncollected, by reason of the wilful failure and neglect of such treasurer to levy upon

and sell such personal property for taxes levied thereon. The county treasurer must on or before the first day of December of each year report to the state board of equalization in detail all personal property taxes reported to him by the county assessor under the provisions of section 2238, showing the amount of such taxes paid or collected, the amount uncollected and the reasons for his failure to collect the same in each instance. In case of the failure of the county treasurer to make such report to the state board of equalization, or of the failure to give sufficient reasons for the noncollection of such taxes, it shall be the duty of the state board of equalization to require the attorney general of the state, or the county attorney of the county, to institute an action against the treasurer and his sureties on his official bond for such amount of money not so collected. Nothing herèin shall be so construed as to prevent the county treasurer from collecting taxes due on personal property by seizure and sale thereof at any time after the expiration of the ninety day period hereinbefore mentioned.

Amd. Sec. 2, Ch. 102, L. 1923.

This section, relating to the collection of taxes on personal property, held not open to the objection that it is unconstitutional on the ground that the title of chapter 119, Laws of 1903, amending, among others, section 3941, Codes of 1895, does not enumerate section 3941

as among those amended, such objection having been removed by the adoption of the Revised Codes of 1907. *Averill Machinery Co. v. Freebury Bros.*, 59 Mont. 594, 198 Pac. 130.

For text treatment of this subject see vol. 24 Cal. Jur. 277.

2244. Title to such property vests in purchaser on payment.

Cited as section 2661, Revised Codes, in *Averill Machinery Co. v. Freebury Bros.*, 59 Mont. 594, 599, 198 Pac. 130.

CHAPTER 176.

SETTLEMENT WITH STATE AUDITOR AND STATE TREASURER.

2255. Settlement of county treasurer with state treasurer. The county treasurer, between the first and twentieth days of each month, must remit to the state treasurer, all moneys belonging to the state of Montana which were collected by such treasurer during the preceding month. Such remittance shall be accompanied by a detailed report upon such form as the state treasurer may prescribe, and for all such moneys by him collected and not remitted by him to the state treasurer within five days from the time herein required he shall pay interest at the rate of ten per cent per annum.

Amd. Sec. 1, Ch. 47, L. 1925.

2256. Penalty imposed on treasurers neglecting to settle.

Rep. Sec. 3, Ch. 47, L. 1925.

2257. Report of county clerk to auditor. The county clerk, between the first and twentieth days of each month, must make a report to the state auditor in such form as the state auditor may prescribe, showing specifically the amount of moneys due the state from each particular source of revenue for the collection of the preceding month.

Amd. Sec. 2, Ch. 47, L. 1925.

2258 to 2264, inclusive. Relating to settlement by county clerk with state auditor and treasurer for taxes.

Rep. Sec. 3, Ch. 47, L. 1925.

CHAPTER 177.

PAYMENT OF TAXES UNDER PROTEST—ACTIONS TO RECOVER.

2269. Payment of taxes under protest—Action to recover. In all cases of levy of taxes, licenses or other demands for public revenue which are deemed unlawful by the party whose property is thus taxed, or from whom such tax or license is demanded or enforced, such party may before such tax or license becomes delinquent pay under written protest such tax or license, or any part thereof, deemed unlawful, to the officers designated and authorized to collect the same; and thereupon the party so paying, or his legal representatives, may bring an action in any court of competent jurisdiction against the officer to whom said license or tax was paid, or against the county or municipality in whose behalf the same was collected, to recover such tax or license, or any portion thereof, paid under protest; provided, that any action instituted to recover any license or tax paid under protest shall be commenced within sixty days after the date of payment of the same; provided further, that when any such license or tax is payable in installments the first installment, or so much thereof as may be deemed unlawful, may be so paid under written protest and suit commenced to recover the same within the time herein prescribed, and if any subsequent installment of such license or tax shall become due or payable before the final determination of the suit commenced to recover the first installment, or portion thereof, so paid under protest, then such subsequent installment, or portion thereof deemed unlawful, may also be paid under written protest, and no suit or action need be commenced to recover the same, but the determination of the suit or action commenced to recover the first installment, or portion thereof, paid under protest, shall determine the right of the party paying such subsequent installment to have the same, or any part thereof refunded to him. All such license and taxes, when so paid under protest, shall be deposited by the treasurer of the county or municipality to the credit of a special fund to be designated as protest fund, and no part thereof shall be paid over to any officer, or placed in any other fund or used for any purpose whatever, but the whole thereof shall be retained in such protest fund until the final determination of any suit or action to recover the same. If no action is commenced within the time herein specified, or if such action be commenced and finally determined in favor of the county or municipality, or treasurer thereof, the amount of such license or tax shall be taken from such protest fund and deposited to the credit of the fund or funds to which the same properly belongs, but if such action is finally determined adversely to such county or municipality, or the treasurer thereof, then the treasurer shall, upon receiving a certified copy of the final judgment in said action, refund the amount of such license or tax, with costs of suit without interest, to the person in whose favor such judgment is rendered; provided, that if such action was commenced for the purpose of recovering the first installment, or any portion

thereof, of any such license or tax, and any subsequent installment thereof, has been paid under protest, as herein provided, then the county treasurer shall, at the time of refunding the amount of such first installment required by such judgment also refund such portion of any subsequent installment as the person holding such judgment is entitled to recover, without interest.

Amd. Sec. 1, Ch. 142, L. 1925.

The complaint in an action to recover taxes paid under protest need not allege that suit was brought within the sixty-day period prescribed in this section, it being sufficient if it be made to appear affirmatively that it was so brought, by recitals showing when the tax was paid and when the complaint was filed. *Belknap Realty Co. v. Simineo et al.*, 67 Mont. 359, 215 Pac. 659.

Under this section, one who pays taxes under protest is not required to file a claim with the board of county commissioners for the amount paid, before commencing an action to recover them. *Story v. Dixon*, 64 Mont. 206, 208 Pac. 592.

For text treatment of this subject see vol. 24 Cal. Jur. 311.

2270. Assessment for taxation—Increase over statement of owner. Whenever any person has delivered to the assessor a sworn statement of his property subject to taxation as now provided by law, and giving the estimated value of such property, and the assessor shall increase such estimated value, or add other property to such assessment list, he shall, at least ten days prior to the meeting of the county board of equalization, give to such person written notice of such change which notice shall be substantially in the following form:

“(Date)

Mr.

A change has been made in your assessment list as follows:
(Set out and describe specifically changes made in list.)

.....,
Assessor of County, Montana.”

Such person may then appear before the county board of equalization and contest the same; and if the assessment of any such person has been added to or changed, either by the assessor or by the county board of equalization, and such person has not been notified thereof and given an opportunity to contest the same before the county board of equalization, the tax on such increased value or added property shall, upon such facts being established, be adjudged by the court to be void, and such facts and all questions relating thereto, when said tax has been paid under protest, may be heard and determined in the action provided for in section 2269. When any person has appeared before the county board of equalization, and has contested the increase in the estimated value of his property, or the addition of other property to his assessment list, and has appealed to the state board of equalization from any action or decision with reference thereto by the county board of equalization and such person is aggrieved at the final action of the state board of equalization in making or allowing such increase or addition, he may pay the tax on such increase or addition or the installments thereof if payable in installments, under protest in the manner provided by section 2269, and thereupon, and within the time prescribed and in the manner provided by said section 2269, may commence an action to recover such

tax, or installments, and in such action contest and litigate the payment of such taxes on such increased value or added property, on the same grounds and for the same reasons that he has contested the same before the county and state boards of equalization, and for no other reasons and on no other grounds; provided, that all of the provisions of section 2269 for the retention or refunding of taxes paid under protest shall apply to taxes paid under protest under this section; and provided, further, that when any action is instituted to recover any tax, or installment thereof, paid under protest, if the value of the property as increased by the assessor or county board of equalization and finally determined by the state board of equalization is an overvaluation of such property, the jury in the case shall determine the actual value of such property at the time the same became liable for taxes, and if the value as fixed by the jury is less than the value as fixed by the county assessor or county board of equalization, and finally determined by the state board of equalization then the plaintiff shall be entitled to recover taxes on the difference between such value as fixed by the jury and the value as fixed by the county assessor or county board of equalization and finally determined by the state board of equalization and if the value as fixed by the jury shall exceed the value on which taxes were levied the plaintiff shall be liable in damages equal to the product obtained by multiplying the proper percentage of such excess valuation as found by the jury by the rate per cent at which taxes were levied on such property.

Amd. Sec. 1, Ch. 142, L. 1925.

Cited in *Belknap Realty Co. v. Simineo et al.*, 67 Mont. 359, 365, 215 Pac. 659.

2272.1. Suit for recovery federal taxes authorized. That the board of examiners of the state of Montana be and it is hereby directed to propound to and against the government of the United States of America and to prosecute to collection a claim by and in the name of the state of Montana for all moneys heretofore paid illegally into the federal treasury as a direct tax upon property situated in the state of Montana.

En. Sec. 1, Ch. 149, L. 1923.

2272.2. Board of examiners to seek legislation. That if the board of examiners of the state of Montana finds that there is no federal statute or law now existing providing for the payment of such funds into the treasury of the state of Montana, it is hereby directed to seek, in such manner as to it shall appear necessary and proper, legislation at the hands of the congress of the United States, providing for the payment of such moneys into the treasury of the state of Montana.

En. Sec. 2, Ch. 149, L. 1923.

2272.3. Disposal of moneys. That all such moneys, so collected and paid by the government of the United States, shall be paid into the treasury of the state of Montana, less the commission for the collection thereof, and shall be held by the state of Montana for a period of five years in trust for the claimants of such funds.

En. Sec. 3, Ch. 149, L. 1923.

2272.4. Employment counsel—Proviso. That the board of examiners of the state of Montana is hereby authorized to employ counsel and to enter into the necessary contracts and agreements with such counsel for the propounding and prosecution of such claim against the government of the United States of America, and fixing the commission to be allowed said counsel for such work, such commission to be contingent upon the collection of such moneys from the United States and to be payable out of same, and not to exceed the ten per centum thereof, provided that the state shall incur no cost or expense in the propounding or prosecution of such claim other than such commission. Provided further that ten per centum of the moneys so collected from the United States shall be paid to the state of Montana to compensate the state for its services in assisting in such collection.

En. Sec. 4, Ch. 149, L. 1923.

2272.5. Notice to claimants. That upon receipt of such funds from the United States by the treasurer of the state of Montana, it shall be his duty to give notice to all claimants thereof by publication once each week for a period of eight successive weeks in a newspaper published in each of the counties of the state of Montana, and, if there be no newspaper in any county, by posting at the front door of the courthouse of such county for such period of time which notice shall set forth that such moneys have been collected and shall notify all claimants of same to propound their claim in writing by filing same with the treasurer of the state of Montana, and shall warn all claimants and persons interested therein that a failure so to file their claims within a period of two years from the date on which such moneys were paid into the treasury of the state of Montana, shall forever bar their right to such funds or any part thereof, and that in default of the filing of such claims, such funds shall escheat to and become the absolute property of the state of Montana.

En. Sec. 5, Ch. 149, L. 1923.

2272.6. Assertion of claims—Payment—Appeals. That all such claimants of such moneys shall file their claims in writing with the state treasurer of Montana on such forms as shall be provided and shall submit their proofs and evidence to the board of examiners of the state of Montana. If such claims are approved by said board of examiners, the auditor of the state of Montana shall draw a warrant on the treasurer of the state of Montana, payable to the order of such claimant and the treasurer shall pay such warrants out of the funds so collected from the government of the United States and held in trust for such purpose. Either such claimants, or the state of Montana, through its attorney general, may appeal from the decisions of the state board of examiners to the district court of the first judicial district of the state of Montana, in and for the county of Lewis and Clark. Such appeal may be taken by a notice of appeal served on the secretary of state for the state board of examiners, where the appeal is taken by a claimant, and where it is taken by the state, by a like notice served on the claimant, in the manner provided by law for the service of notices. In either case, the notice of appeal shall be filed with the clerk of said court within sixty days after the decision

of the board of examiners. Any judgment rendered on such appeal in the district court shall be subject to appeal to the supreme court.

En. Sec. 6, Ch. 149, L. 1923.

2272.7. Escheat of funds. That at the end of a period of five years from the date on which said moneys so collected from the United States shall be paid into the treasury of the state of Montana, said funds, to the extent to which no claims have been filed against same, shall escheat to and become the absolute property of the state of Montana. Said funds, to the extent that any claims have been filed against same, shall remain in the state treasury subject to the final determination of such claims, and all such funds not finally determined to belong to the claimants thereof shall at that time escheat to and become the absolute property of the state of Montana.

En. Sec. 7, Ch. 149, L. 1923.

CHAPTER 178.

POLL TAX.

2273. Persons liable to poll tax.

This section, levying a per capita tax of three dollars, in addition to a poll tax of two dollars for county purposes upon every male inhabitant of a given age who is not the head of a family, is invalid as in contravention of section 4, article XII, of the constitution, vesting the power to levy taxes upon persons and property of counties, cities, etc., in the municipal authorities but prohibiting the legislature from doing so. (Mr. Justice Holloway dissenting.) State ex rel.

Pierce v. Gowdy, 62 Mont. 119, 203 Pac. 1115.

The "Bachelor's Tax Law" is a revenue measure and not maintainable as an attempted exercise of the police power of the state by the imposition of an exaction upon county inhabitants for the protection of the public health, the public morals or the public safety. (Mr. Justice Holloway dissenting.) State ex rel. Pierce v. Gowdy, 62 Mont. 119, 203 Pac. 1115.

2295. Disposal of proceeds.

Cited as section 2714, Revised Codes in State ex rel. Pierce v. Gowdy, 62 Mont. 119, 124, 203 Pac. 1115.

CHAPTER 179.

CORPORATION LICENSE TAX.

2296. Corporation license tax—Organizations not liable for same.

Sections 2296 to 2299, providing for a corporation license fee, allow certain deductions from the gross income of a corporation in determining its net income upon which the fee is to be computed, if "engaged in business" wholly in Montana. Plaintiff, a foreign corporation engaged in the business of coal mining in this state, maintained its general office in Minneapolis, where the meetings of the stockholders and directors were held and from where the business was directed, to which office moneys were sent for deposit and where it received interest and dividends from invested funds and disbursed same to its stockholders. The

state treasurer, claiming that the corporation by reason of the above facts was partly engaged in business in Montana and partly in Minnesota, and therefore subject to a higher fee, refused to allow the deductions. Held, in plaintiff's action to recover the excess fee paid under protest, that by doing the things done by the company at its general office in Minneapolis it was not "engaged in business" in the state of Minnesota within the meaning of the statute, was therefore not partly engaged in business in this state and partly in Minnesota but wholly engaged in the business of coal mining in Montana, and hence entitled

to the deductions claimed. *Cottonwood Coal Co. v. Junod*, 73 Mont. 392, 236 Pac. 1080.

Sections 2296-2304 were cited in *East Helena State Bank v. Rogers*, 73 Mont. 210, 213, 236 Pac. 1090.

2297. Method of ascertaining net income of corporation doing business wholly within state.

Cited as section 4, Chapter 79, L. 1917, in *Cottonwood Coal Co. v. Junod*, 73 Mont. 392, 394, 236 Pac. 1080.

2299. License fee, how computed—Return of income. The license fee shall be computed upon the total net income of the corporation received within each preceding calendar year ending December 31st; provided, that any corporation subject to this license fee may designate the last day of any month in the year as the day of the close of its fiscal year, and shall be entitled to have the license fee payable by it computed upon the basis of the net income ascertained as herein provided for the year ending on the day so designated in the year preceding the date of assessment, instead of upon the basis of the net income for the calendar year preceding the date of assessment, and it shall give notice to the state board of equalization of the day it has thus designated as the close of its fiscal year, at any time not less than thirty days after the first day of January of the year in which its return would be filed if made upon the basis of the calendar year. Every corporation, subject to the license fee herein imposed, shall, for the year ending on the thirty-first day of December, or for its fiscal year selected under the provisions hereof, in each year hereafter beginning with the year 1923, render a true and accurate return of its annual net income in the manner and form to be prescribed by the state board of equalization, and containing such facts, data and information as are appropriate and in the opinion of the state board of equalization necessary to determine the correctness of the net income returned and to carry out the provisions of this act. For the purpose of fixing the license fee to be paid for the year of 1923, every corporation, subject to the license fee herein imposed, shall make the required return as to its annual net income for the year 1922 on or before the first day of May, 1923. The return shall be sworn to by the president, vice-president or other principal officer, and by the treasurer or assistant treasurer, and shall be filed with the state board of equalization on or before the first day of March in each year, except the year 1923, when it shall be filed on or before the first day of May. In cases wherein receivers, trustees in bankruptcy, or assignees are operating the property or business of a corporation subject to the license fee imposed by this act, such receiver, trustee, or assignee shall make the return in the same manner and form as such corporation is hereinbefore required to make return, and any license fee due on the basis of such returns made by the receiver, trustee, or assignee, shall be assessed and collected in the same manner as if assessed directly against the corporation of whose business or property they have custody and control, and shall be paid by such receiver, trustee, or assignee out of the property of the company in his hands, prior to the claims of creditors or stockholders.

Amd. Sec. 1, Ch. 146, L. 1923.

Cited as section 4, Chapter 79, L. 1917, in *Cottonwood Coal Co. v. Junod*, 73 Mont. 392, 395, 236 Pac. 1080.

2300. Assessments, how made—Payment fee—Penalty. All assessments shall be made by the state board of equalization, and the several corporations shall be notified of the amounts for which they are respectively liable, on or before the first day of June of each successive year, and said assessments shall be paid on or before the fifteenth day of June; provided, that every corporation computing its license fee upon the income of the fiscal year which it may designate in the manner hereinbefore provided, shall pay the fee due under its assessment within thirty days after the date upon which it is required to file its list or return of income for assessment. In cases of refusal or neglect to make such return, and in cases of erroneous, false, or fraudulent returns, the state board of equalization shall, upon the discovery thereof at any time within three years after said return is due, make a return upon information obtained as provided for in this act, and the assessment made by the state board of equalization shall be paid by such corporation immediately upon notification of the amount of such assessment. If the license fee assessed thereunder shall not be paid by any corporation liable to pay the same under the provisions of this act on or before the fifteenth day of June in any year, or within thirty days from the date on which the return of income is required to be made by the corporation, there shall be added the sum of ten per cent on the amount of the license fee unpaid, and interest at the rate of one per cent per month upon said license fee from the time the same becomes due, and the state shall have a lien for the payment of such license fee, penalty, and interest, which said lien shall attach to any and all property owned or possessed within the state by such corporation, which lien may be enforced in the same manner as liens are enforced at law.

Amd. Sec. 2, Ch. 146, L. 1923.

2302. Filing returns. When the assessment shall be made as provided in this act, the returns, together with any corrections thereof which may have been made by the state board of equalization, shall be filed in the office of said board, and shall constitute public records and be open to inspection as such only upon the order of the governor, and under rules and regulations to be prescribed by the state board of equalization.

Amd. Sec. 3, Ch. 146, L. 1923.

2303. Procedure on understatement—Forms—Determination and payment tax—Disclosures. If the state board of equalization has reason to believe that the amount of any income returned is understated it shall give notice in writing of not less than five days to the corporation making the return to show cause why the amount of the return should not be increased, and upon proof of the amount understated may increase the same accordingly. Such corporations may furnish sworn testimony to prove any relevant fact bearing upon said return. The state board of equalization shall have power to prescribe forms for the returns and notices and such other regulations as may from time to time be found necessary for the purpose of carrying into effect the provisions of this act. Jurisdiction is hereby conferred upon the district court of the first judicial district of the state of Montana, in and for the county of Lewis

and Clark, to compel attendance of witnesses to testify before the state board of equalization, together with the production of books and such other testimony by appropriate process. Upon the determination by the state board of equalization of the amount of tax due from any and all corporations under the provisions of this act, the state board of equalization shall certify the amount to the state treasurer, at the same time mailing a notice of the amount of taxes thus determined to be due to the corporation making such return. Such corporation shall thereupon remit the amount of such tax to the state treasurer. When the state board of equalization has reason to believe that the business of any corporation is so conducted as either directly or indirectly to distort the true net income of the corporation and the net income properly attributable to this state, whether by the arbitrary shifting of income, through price fixing, charges for service, or otherwise, whereby the net income is arbitrarily assigned to one or another corporation carrying on business under a substantially common control, it may require the disclosure of such facts as it deems necessary for the proper computation of the entire net income and the net income properly attributable to this state, and in determining the same, the board shall have regard to the fair profits which would normally arise from the conduct of the business.

Amd. Sec. 4, Ch. 146, L. 1923.

2303.1. Effect of repeal. All acts and parts of acts in conflict herewith are hereby repealed, provided, however, that the amendment of the sections as amended by this act shall not be construed to relieve or release any corporation from the payment of any license fee which such corporation should have paid under the provisions of such sections before the amendment thereof by this act, or of any penalty or interest which has heretofore or may hereafter attach to or become due thereon, but all such license fees, penalties and interest shall be fixed and determined under the provisions of such sections as amended and shall be paid and collected as though such sections had not been amended by this act.

En. Sec. 5, Ch. 146, L. 1923.

CHAPTER 181.

SLEEPING-CAR COMPANY LICENSE TAX.

2313.1. Definitions. The term "board" when used in this act shall mean the state board of equalization.

Any person, persons, copartnership, joint stock company, association, or corporation (not being a railroad company or a lessee of a railroad company) wherever organized or incorporated, owning and operating, or operating any cars known as dining, buffet, chair, parlor, palace or sleeping-cars, which are used upon railroads within this state, unless the ownership of such cars be identical with that of the lines of railroads on which they are operated, shall be deemed a sleeping-car company for the purposes of this act.

En. Sec. 1, Ch. 64, L. 1923.

2313.2. Reports. Every sleeping-car company shall annually on or before the first day of March and in such forms and covering such period as the state board of equalization shall prescribe, make and file with it a statement verified by the oath of the person, agent or officer making the same, setting forth the facts called for. Such report shall contain:

(1) The name of the company.

(2) The nature of the company, whether a person, agent, trustee, lessee, receiver, or other person, or a joint stock company, partnership, association, or corporation.

(3) The location of its principal office, and under the laws of what state or country organized, and when.

(4) The name and address of the president, secretary, auditor, treasurer and superintendent or general manager.

(5) The name and address of its chief officer or managing agent in Montana.

(6) Its capital stock.

(a) The amount authorized.

(b) The amount issued.

(c) The amount of capital stock invested in its sleeping-car business.

(7) The number of shares of stock.

(a) Outstanding.

(b) Not issued.

(c) Treasury; and whether common or preferred.

(8) The amount of the bonds outstanding; when issued; when due, and the rate of interest of each issue.

(9) The par and market value of the stocks and bonds issued and outstanding.

(10) The whole length and the names of railroad lines over which its cars were transported in the state of Montana.

(11) The total car mileage and the car mileage within this state.

(12) The gross and net earnings during the year.

(13) Such other facts and information as such company or the state board of equalization may deem material upon the question of the true and full value of said property within this state. Said board shall furnish forms upon which to make such reports.

En. Sec. 2, Ch. 64, L. 1923.

2313.3. Assessment. The state board of equalization shall carefully consider all reports made pursuant to section 2 and all other facts and evidence collected and available, and shall fix the valuation of the property of sleeping-car companies operating in the state for the purpose of levying and collecting license taxes thereon, as hereinafter provided.

En. Sec. 3, Ch. 64, L. 1923.

2313.4. Method of determining valuation. (1) It shall find, ascertain and determine the actual value in money of the entire amount of capital stock of each such company invested in its sleeping-car business, and when the value of the capital stock cannot be reliably ascertained it shall find, ascertain and determine the value of the entire property used in said business. From the amount so obtained, it shall deduct the

actual value of its real estate situate without this state not used in said business, and also the actual value of all its personal property, not used in said business. The remainder shall be taken and considered as the actual value of the capital stock of such company invested or used in its business.

(2) The board shall then divide the amount so obtained by the total car mileage on railroads over which the company did business to obtain the value per car mile, and shall then multiply the value per car mile thus obtained by the total number of car miles within this state. The result shall be taken and considered as the actual value of the property of such company subject to the license tax in this state, subject to review as provided in section 5.

En. Sec. 4, Ch. 64, L. 1923.

2313.5. Notice of hearing. The board shall thereupon give notice to the officer of such company attesting its report of the time and place such company may appear and be heard in respect to such valuation to be made upon its property. After such hearing the said board may make such changes in its valuation as shall appear just and reasonable.

En. Sec. 5, Ch. 64, L. 1923.

2313.6. License tax. The board shall thereupon levy a license tax upon the property of such sleeping-car company at the rate of one and one-half per cent ($1\frac{1}{2}\%$) on the valuation thus found by it for the use of the state, and the board shall certify such assessment and levy to the state treasurer, who shall thereupon, by registered letter, notify the officer attesting the report of such company, of the amount of the assessment, the rate of levy and the amount of the tax; and such company shall have thirty days after the mailing of such notice within which to pay said tax to the state treasurer. And such tax when paid shall be turned into the general fund of the state treasury.

En. Sec. 6, Ch. 64, L. 1923.

2313.7. Failure to report—Nonpayment—Action for collection. (1) If any sleeping-car company shall fail to make the report required of it by this act, the board shall proceed upon the best information it may be able to obtain to fix the valuation against such company and shall notify it by letter of the action taken in that behalf. Thereupon the company so notified may appear and be heard as above provided.

(2) All taxes remaining unpaid after notice from the state treasurer, as above provided, shall draw interest at the rate of fifteen per centum per annum after they are due, and upon such failure to pay, the attorney general shall proceed by action in the name of the state against such company to collect the same, together with interest and the cost of the suit.

(3) Any such company claiming to be aggrieved by the levy of a license tax upon its property, may, within six months from the payment of the tax, and not thereafter, bring and maintain an action against the state in the district court of Lewis and Clark county to recover such part of the tax so paid as shall exceed the amount the company should have paid. The state may be served with the summons in such action

by delivering a copy thereof to the attorney general or leaving it at his office in the capitol with one of his assistants.

(4) But no such company shall be permitted to contest the validity of any tax assessed and levied against it, unless at or before the time of serving its complaint or answer, as the case may be, it shall deposit with the state treasurer the amount of such tax, together with interest thereon at the rate of fifteen per cent per annum as above provided. In case the amount of the tax justly and equitably due from such company shall be finally determined to be less than the amount so paid, the excess shall be refunded to such company by direction of the court by the state treasurer.

En. Sec. 7, Ch. 64, L. 1923.

2313.8. Estoppel. (1) If any company described in section 1, or its officers or agents shall unreasonably refuse or neglect to make any report required by law or by the said board, or shall unreasonably refuse or neglect to answer any material question, or to permit an inspection of its records, books, accounts or papers when requested by said board, it shall be estopped to question or impeach the action or determination of the board, except upon satisfactory proof of fraud or mistake injurious to it.

(2) No such company shall be allowed in any action or proceeding to question the amount or valuation of its property and franchises as assessed by the board, unless it shall have made and filed with the board a full and complete report of the facts and information prescribed by law, and called for by the board; provided, that the refusal or neglect of such company to file its report in time may, on verified petition and for good cause shown, be excused by the board on condition that such company make a full and complete report disclosing all facts and information required of it within fifteen days after leave is given to file such report, and shall appear before the board and make full disclosure of all property liable to assessment and taxation under this act.

En. Sec. 8, Ch. 64, L. 1923.

2313.9. First tax, when due. The license tax shall be first imposed and paid for the whole calendar year 1923, and shall be based upon the reports as prescribed in section 2 for the year 1922, and such report shall be made to the board by April 1, 1923.

En. Sec. 9, Ch. 64, L. 1923.

2313.10. License. The receipt by the state treasurer of the license tax paid in full shall serve as a license to the sleeping-car company to conduct its business in the state of Montana during the year when issued.

En. Sec. 10, Ch. 64, L. 1923.

2313.11. Repeals—Exceptions. Sections 2314 and 2315 of the Revised Codes of 1921 are hereby repealed. Provided, however, that no person or corporation shall be relieved or released from the payment of any license tax which such person or corporation should have paid under the provisions of such sections so repealed, and the state of Montana shall have the right to collect and receive from any such person or corporation any such

license tax; and for such purpose may maintain and prosecute to final determination any suit, action or proceeding heretofore instituted for such purpose and now pending, and may institute and commence any such suit, action or proceeding for such purpose after the taking effect of this act.

En. Sec. 11, Ch. 64, L. 1923.

2314. License of sleeping-car company.

Rep. Sec. 11, Ch. 64, L. 1923.

2315. Statement to be filed by company.

Rep. Sec. 11, Ch. 64, L. 1923.

CHAPTER 182.

COAL MINES AND DEALERS' LICENSE TAX.

2317. Coal mines license tax—Amount—Exceptions.

Cited in State ex rel. City of Butte v. Police Court, 65 Mont. 94, 98, 210 Pac. 1059.

2328. License to retail coal—Fees.

A city ordinance exacting a fee of one dollar from coal dealers and in addition five cents per ton for every ton of coal sold, without incorporating therein the clause limiting the payment of the five cents to coal upon which the mine license fee exacted by section 2317 had not been paid to the state, was invalid as in excess of the power of the city to impose. State ex rel. City of Butte v. Police Court, 65 Mont. 94, 210 Pac. 1059.

2330. Payment of license fees.

Cited in State ex rel. City of Butte v. Police Court, 65 Mont. 94, 99, 210 Pac. 1059.

CHAPTER 183.

METALLIFEROUS MINES LICENSE TAX.

2344. "Person" Defined.

Rep. Sec. 17, Initiative Measure No. 28, L. 1925, page 497.

Taxes and fire insurance premiums paid upon milling and reduction works owned and operated by a mining company in connection with its mining operations are not deductible as a part of the cost of extracting the minerals and metals from ores taken from its mines in computing

the net proceeds of mines for the purpose of arriving at the amount of license tax payable under sections 2344-2355, construed in the light of the provisions of sections 2088-2096, relating to the taxation of mines and net proceeds. Anaconda Copper Mining Co. v. Junod, 71 Mont. 132, 227 Pac. 1001.

2344.1. "Person" defined. The term "person," as used in this act, shall mean and include any individual, firm, copartnership, association, joint stock company, common-law company, business trust, syndicate, and corporation.

En. Sec. 1, Initiative Measure No. 28, effective December 9, 1924.

2344.2. License tax. Every person who engages in or carries on the business of working or operating any mine or mining property in the state of Montana from which gold, silver, copper, lead or any other

metal or metals, or precious or semi-precious gems or stones of any kind shall be mined, extracted or produced, whether such person shall carry on such business or engage in such work or operations as owner, lessee, trustee, possessor, receiver, or in any other capacity, must for the year 1925, and each year thereafter, when engaged in or carrying on such business, work or operations, pay to the state treasurer, for the exclusive use and benefit of the state of Montana, a license tax for engaging in and carrying on such business, work or operation in this state, and shall pay to such state treasurer for such annual license the taxes hereinafter prescribed, provided, however, that nothing contained in this act shall be construed as requiring laborers or employees hired or employed by any person to mine or to work in or about any mine or mining business or property, to procure such license or to pay such license taxes, nor shall any discovery work required to be done in prospecting for or locating any mining claims, or any annual assessment work, or work required in the obtaining of title to mining property from the United States, or required by the laws of the United States or of this state in order to hold possessory title to any mining claims, be deemed the engaging in or carrying on of the business of working or operating any such mine or mining property.

En. Sec. 2, Initiative Measure No. 28, effective December 9, 1924.

2344.3. Gross value of product, how determined. The total "gross value of product" as used in this act, shall mean the market value of all merchantable metals, precious and semi-precious gems and stones extracted or produced, each year from any mine or mining property in the state of Montana or recovered from the smelting, milling, reduction, or treatment in any manner of ores extracted from any such mine or mining property or from tailings resulting from the smelting, reduction or treatment of any such ores. That whenever the ores require smelting, reduction or treatment to ascertain the metal contents of such ores, the gross value of the product thereof shall be determined by taking the market value of all merchantable metals or mineral products extracted or recovered thereby, as shown by the gross smelter returns of such metals or mineral product in dollars and cents, without any deductions for costs of smelting, reduction or treatment, or otherwise, based upon the average quotations of the price of such metals, or mineral products, in the city of New York, as evidenced by some established authority or market report, such as the Engineering and Mining Journal of New York City, or other standard publications, giving the market reports during the calendar year immediately preceding. Should there be no quotation covering any particular product, then the state board of equalization shall fix the value of such gross product, or such portion thereof, in such a manner as may seem equitable.

En. Sec. 3, Initiative Measure No. 28, effective December 9, 1924.

2344.4. Amount of tax. The annual license tax to be paid by such person engaged in or carrying on the business of working or operating any mine or mining property in this state from which gold, silver, copper, lead or any other metal or metals, precious or semi-precious gems or stones

are produced, shall be one dollar, together with an additional sum or amount equal to an amount computed on the gross value of product which may have been derived by such person from such business, work or operation within this state during the calendar year immediately preceding, at the following rates:— $\frac{1}{4}$ of 1% of the amount by which such gross value of products exceeds \$100,000 and does not exceed \$250,000; $\frac{1}{2}$ of 1% of the amount by which such gross value of product exceeds \$250,000 and does not exceed \$400,000; $\frac{3}{4}$ of 1% of the amount by which the gross value of product exceeds \$400,000 and does not exceed \$500,000 and 1% of the amount by which the gross value of product exceeds \$500,000.

En. Sec. 4, Initiative Measure No. 28, effective December 9, 1924.

2344.5. Computation of gross value of product. Every person engaged in or carrying on the business of working or operating any mine or mining property in this state from which gold, silver, copper, lead or any other metal or metals, precious or semi-precious gems or stones are produced, must, not later than the fifteenth day of April, in such year when engaged in or carrying on any such business, work or operation, make out a statement of the gross value of product from all mines and mining properties worked or operated by such person during the calendar year immediately preceding. Such statement shall be in the form prescribed by the state board of equalization, and must be verified by the oath of such person, or the manager, superintendent, agent, president or vice-president of the corporation, joint stock or other company or syndicate and must be delivered to the state board of equalization not later than the fifteenth day of April. Such statement shall show the following:

1. The name and address of the owner or lessee of the mine or mining property.
2. The description and location of the mine or mining property.
3. The number of tons of ore or other mineral products or deposits extracted from the mine or mining property during the period covered by the statement.
4. The name and location of the smelter, mill or reduction works to which such ore has been shipped or sold during the period covered by the statement and such other information as the state board of equalization may require.
5. The gross yield of such ores, mineral products or deposits in constituents of commercial value, that is to say, the number of ounces of gold or silver, pounds of copper, lead or zinc, or other commercially valuable constituents of said ores or mineral products or deposits, measured by standard units of measurement during the period covered by the statement.
6. The gross value of product in dollars and cents.

En. Sec. 5, Initiative Measure No. 28, effective December 9, 1924.

2344.6. Computation and notice of tax. The state board of equalization shall examine each such statement and return filed and determine and ascertain therefrom, and compute and assess the amount of the license tax to be paid by the person making and filing the same, and shall, not

later than the first day of June, certify to the state treasurer the name of each person subject to the payment of license taxes under the provisions of this act, the amount thereof to be paid by such person. The said board shall at the same time mail to each person making and filing such statement and return, a written notice of the amount of the license tax to be paid by each, respectively, that the same is due and payable to the state treasurer, and that it will become delinquent at five o'clock P. M. on the thirtieth day of November, immediately following, and that if the same becomes delinquent a penalty of ten per centum will be added thereto, and that the whole amount of such license tax, with penalty added, will bear interest at the rate of twelve per centum per annum from the date the same becomes delinquent until paid. If any such person has sold or otherwise disposed of any of its mine's products at a price substantially below the true market price of such product at the time and place of such sale or disposal, then the state board of equalization shall compute the gross value of such portion of said mine's product, so sold or disposed of substantially below the market price as aforesaid, which gross value shall be based upon the quotations of the price of such mine's product in New York City, at the time such portion of the product was so sold or otherwise disposed of as evidenced by some established authority or market report, such as the Engineering and Mining Journal, of New York, or some other standard publication, giving the market reports for the year covered by such statement. Should there be no quotation covering any particular product, then the state board of equalization shall fix the value of such gross product, or such portion thereof, as shall have been sold or otherwise disposed of at a price substantially below the true market price at the time and place of such sale or disposal in such a manner as may seem to be equitable.

En. Sec. 6, Initiative Measure No. 28, effective December 9, 1924.

2344.7. Delinquent taxes—Penalty. All license taxes assessed under the provisions of this act shall become delinquent if not paid by five o'clock P. M., on the thirtieth day of November following the date when the same are assessed and certified to the state treasurer, and as the same become delinquent a penalty of ten per centum shall be added thereto, and the whole amount of said license tax, with penalty added, shall bear interest at the rate of twelve per centum per annum from the date of becoming delinquent until paid.

En. Sec. 7, Initiative Measure No. 28, effective December 9, 1924.

2344.8. Penalty for failure to file statement. If any person shall fail, refuse or neglect to make and file such statement and return within the time prescribed, the state board of equalization, shall, immediately after such time has expired, ascertain and determine as nearly as may be possible from any returns or reports filed with any state or county officer or board under any law of this state, and from any other information which the board may be able to obtain, the total gross value of product of such person from such business during the calendar year immediately preceding the year in which the license tax is to be paid, and license issued, and shall make and file a statement showing the amount of such gross value of

product and shall ascertain and determine and compute and assess the amount of the license taxes due from, and to be paid by such person, and shall immediately certify the same to the state treasurer, and give notice to such person in the same manner as though such statement had been filed within time, and the state shall proceed to collect such license tax adding thereto and collecting therewith, if the same is delinquent, the same penalty and interest as provided for herein for other delinquencies.

En. Sec. 8, Initiative Measure No. 28, effective December 9, 1924.

2344.9. Production of evidence. Should the state board of equalization have reason to believe that any statement and return is false, or erroneous in any particular, it may require the person, or if made by a corporation, association or company, the officers thereof, and the employees of any such person, corporation, association or company, to appear before the board and testify concerning the same and any statement contained therein, and may examine all books, records, papers and documents of such person pertaining to such business, upon giving five days' written notice to such persons, or officers or employees thereof having custody of such books, records, papers and documents, and any person failing, refusing or neglecting to so appear, or refusing to be sworn or to testify, or refusing to answer any material question propounded by the board or any of its members, or refusing to permit the board, or its members, employees or accountants to examine such books, records, papers or documents, or any thereof, pertaining to such business, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than one thousand dollars, or by imprisonment in the county jail for a term not exceeding six months, or by both such fine and imprisonment. If the board, after hearing such evidence and after such examination of the books, papers, documents and records of such person, shall find and determine that such statement and return is erroneous or false in any material matter, the board shall change and correct the same so as to show the true gross value or product and shall reassess the amount of the license tax due from such person, and may add thereto a penalty of not exceeding fifty per centum, and shall thereupon immediately certify the amount of such license tax with the penalty added thereto to the state treasurer, and shall at the same time mail to such person a written notice of the corrections and changes made in such statement and return and the amount of the license tax and penalty certified to the state treasurer. The state treasurer shall collect such license tax with penalty added, and if the same has become delinquent he shall also collect interest thereon from the date of delinquency until paid at the rate of twelve per centum per annum. Provided further, that in order to verify such statement and return the state board of equalization may require any person, corporation, association, or company engaged in the business of smelting, milling, reduction or treatment in any manner of ores extracted or produced from any mine or mining property in the state of Montana to appear before the board and testify concerning the gross mineral content of any such ore, or at the request of said board to furnish sworn statements showing the gross yield of such ores, mineral products or deposits in constituents of commercial value, that is to say, the number

of ounces of gold, silver, pounds of copper, lead or zinc, or other commercially valuable constituents of said ores or mineral products or deposits, measured by standard units of measurement during the period covered by such statement, without any deductions whatsoever for smelting, milling, reduction or treatment of such ores or mineral product. The books, records, papers and documents of such person, corporation, association or company engaged in the business of smelting, milling, reduction or treatment in any manner of ores extracted or produced by any mine or mining property in the state of Montana shall be open to inspection and examination by the said state board of equalization, or its members, employees, or accountants at any time or place, that said board may designate. If any person required by this act to make or file any statement, or to verify, under oath any statement, shall make such statement false in any material respect, or shall verify, under oath, any statement false in any respect or shall fail, neglect or refuse to file any statement required by said state board of equalization or shall refuse to appear before the board to testify concerning the gross mineral content of any such ore, or shall refuse to allow the board, its members, employees or accountants at any time or place to inspect or examine the books, records, papers and documents of such person, corporation, association or company engaged in the business of smelting, milling, reduction or treatment in any manner of ores extracted or produced by any mine or mining property in the state of Montana, shall be deemed guilty of a misdemeanor and shall be punished by a fine of not exceeding one thousand dollars, or by imprisonment in the county jail for not exceeding six months, or by both such fine and imprisonment.

En. Sec. 9, Initiative Measure No. 28, effective December 9, 1924.

2344.10. Rehearing on determination of license tax. Every person whose license tax has been determined and assessed by the state board of equalization under any of the provisions of this act, who shall feel aggrieved by the determination and assessment of the board as to the amount of gross value of product, or as to the amount of the license tax, may, at any time within ten days after the date of notice thereof, required to be given to such person, file with the board a petition for a rehearing in which petition must be stated and set forth particularly and specifically the grounds and reasons therefor, and the manner in which the amount of the gross value of product or the amount of the license tax, or both, should be changed or corrected. Upon the filing of such petition, if it appears to the satisfaction of the board therefrom that the board has erred in any manner in ascertaining and determining the amount of the gross value of product, or the amount of the license tax, or both, the board shall immediately correct such error, or errors, and if such correction shall be in conformity with the request contained in the petition for a rehearing the board shall take no further steps in connection with such petition, other than to certify steps in connection with such petition, other than to certify to the state treasurer the amount of the license tax due from such person after the making of such correction, and notifying such person thereof. If, from such examination, it does not appear to the satisfaction of the board that it has erred in any manner the board

shall grant such rehearing, fix a day when the board will take up and hear such matter, and give notice to such person of such date of hearing as the board may deem reasonable. On such hearing such person, and taxpayer interested, and the board may introduce witnesses and take testimony on any material matters connected with such return and license tax, and after considering such evidence the board shall fix and determine the gross value of product, and reassess the amount of the license tax to be paid by such person, and giving notice thereof in the manner required by section 6 of this act.

En. Sec. 10, Initiative Measure No. 28, effective December 9, 1924.

2344.11. Lien of tax. The license tax assessed against any person under this act, together with all penalties and interest thereon, shall be a lien upon any and all property owned by such person within this state and used by such person in connection with such business, which lien shall attach to such property on the date when the license tax is certified to the state treasurer by the state board of equalization and such lien may be enforced in the name of the state of Montana, in the same manner as other liens are enforced at law.

En. Sec. 11, Initiative Measure No. 28, effective December 9, 1924.

2344.12. Disposal of proceeds of tax. Fifty per cent of all license taxes, penalties and interest collected by the state treasurer under the provisions of this act shall be by him paid into and deposited to the credit of the general fund of the state, and fifty per cent shall be deposited to the credit of the common school interest and income fund, and whenever any license tax is paid under the provisions of this act the state treasurer shall issue to the person paying the same a license authorizing such person to engage in and carry on such business until the first day of January immediately following the year for which such license tax is paid and such license issued.

En. Sec. 12, Initiative Measure No. 28, effective December 9, 1924.

2344.13. Commencing business. If any person shall, after the first day of January of any year, engage in or commence the carrying on of the business of working or operating a mine or mining property in this state, from which any merchantable metal, precious, and semi-precious gems and stones are extracted and produced, such person must, within sixty days after so engaging in or commencing to carry on such business, notify both the state board of equalization and the state treasurer of such fact.

En. Sec. 13, Initiative Measure No. 28, effective December 9, 1924.

2344.14. The license taxes herein provided for shall be in addition to all other taxes, licenses, and other fees, now required to be paid by persons subject to the provisions of this act.

En. Sec. 14, Initiative Measure No. 28, effective December 9, 1924.

2344.15. The license tax for the year 1925 shall be based and computed on the gross value of product for the calendar year 1924.

En. Sec. 15, Initiative Measure No. 28, effective December 9, 1924.

2344.16. Unconstitutionality or invalidity. If any clause, sentence, paragraph or part of this act shall for any reason, be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of the act, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof, directly involved in the controversy in which such judgment shall have been rendered. No caption or any section or set of sections shall in any way affect the interpretation of this act, or any part thereof.

En. Sec. 16, Initiative Measure No. 28, effective December 9, 1924.

2344.17. Repealing clause. Sections 2344 to 2355, both inclusive, of the Revised Codes of Montana, 1921, are hereby repealed, provided, however, that no person shall be relieved from the payment of any license tax, which may have been computed, levied, imposed or assessed, and which is due or shall become due under the provisions of said sections, or of any penalty or interest thereon, but all such license taxes, penalties and interest shall be paid and collected as though said sections were not repealed by this act.

En. Sec. 17, Initiative Measure No. 28, effective December 9, 1924.

2347. Net proceeds—Computation of.

Cited in *Anaconda Copper Mining Co. v. Junod*, 71 Mont. 132, 135, 227 Pac. 1001.

CHAPTER 184.

CEMENT PRODUCERS' AND DEALERS' LICENSE TAX.

2357. License tax on manufacturers of cement, etc. Every person engaged in or carrying on the business of producing or manufacturing cement, cement plaster, or gypsum plaster in this state, must, for the year 1921, and each year thereafter, when engaged in or carrying on such business in this state, pay to the state treasurer, for the exclusive use and benefit of the state of Montana, a license tax for engaging in and carrying on such business, in an amount equal to four cents per barrel for each and every barrel of cement, containing three hundred and seventy-six pounds, and five cents per ton of two thousand pounds, on cement plaster or gypsum manufactured or produced, during such year by such person within the state of Montana.

Amd. Sec. 1, Ch. 127, L. 1925.

2368. License tax on sales of cement, etc. Every person who engages in, or carries on the occupation or business in this state of retailing or selling at retail cement, cement plaster, gypsum plaster, or other by-products of cement, must, for the year 1921, and annually each year thereafter when engaged in such occupation or business, procure from the state treasurer a license to engage in and carry on such occupation or business in this state, and shall annually pay to the state treasurer for such license a tax of one dollar, together with an additional sum or amount equal to four cents per barrel of three hundred and seventy-six pounds of cement, and five cents per ton of two thousand pounds on cement plaster, gypsum plaster, or other by-products of cement sold by

such person during such year, and for the manufacturing or producing of which no person has paid or assumed a liability for the payment of any license tax to the state of Montana, under any law of this state.

Amd. Sec. 2, Ch. 127, L. 1925.

CHAPTER 185.

GASOLINE DISTRIBUTORS' AND DEALERS' LICENSE TAX.

2381. "Person," "distributor" and "dealer" defined.

Sections 2381-2396 were cited in *State v. Sunburst Refining Co.*, 73 Mont. 68, 75, 235 Pac. 428.

2382. Gasoline distributors' license tax. Every distributor shall pay for the year 1927 and each year thereafter to the state treasurer a license tax for engaging in and carrying on such business in this state in an amount equal to three cents for each gallon of gasoline refined, manufactured, produced, or impounded by such distributor and sold by him to this state, or shipped, transported or imported by such distributor into and distributed and sold by him within this state after it has arrived in and is brought to rest within this state, whether sold in the original packages or in the broken packages during such year, provided that all gasoline delivered by any distributor to any of his service stations in this state shall be deemed to have been sold and shall be treated and considered in computing such license tax in the same manner as though the same had been sold to dealers or to other persons.

Amd. Sec. 1, Ch. 150, L. 1923; Amd. Sec. 1, Ch. 186, L. 1925; Amd. Sec. 1, Initiative Measure No. 31, effective January 1, 1927.

In an action by the state to recover the tax imposed by this section, upon dealers in gasoline and distillate, commenced upon the theory that since the decision in *State v. Sunburst Refining Co.*, 73 Mont. 68, holding chapter 160, L. 1923, amendatory of such section, unconstitutional as so arbitrary, unjust and unreasonably discriminatory against dealers in Montana manufactured gasoline and distillate as to render it void as denying to them the equal protection of

the law, the original sections remain in force, held that the sections prior to amendment are likewise unconstitutional for the same reason. *State v. Sunburst Refining Co.*, 76 Mont. 472, 248 Pac. 186.

This section as amended by chapter 150, L. 1923, was so arbitrary, unjust and unreasonably discriminatory against dealers in Montana manufactured gasoline and in favor of those manufacturing gasoline imported into the state, that it is void as denying to the former the equal protection of the law. *State v. Sunburst Refining Co.*, 73 Mont. 68, 235 Pac. 428.

2383. Gasoline dealers' license tax. Every dealer shall, for the year 1927 and each year thereafter, when engaged in such business in this state, pay to the state treasurer for the exclusive use and benefit of the state of Montana a license tax for engaging in such business in this state equal to three cents for each gallon of gasoline sold or distributed by such dealer in this state during such year, provided, however, that no gasoline sold by such dealer, which was purchased by him from a producer or distributor, who had paid the tax thereon, shall be included or considered in determining the amount of such license tax to be paid by such dealer, but only such gasoline as was shipped, transported or imported into this state and purchased by such dealer before it had arrived in and was brought to rest within this state and then resold by such dealer, whether

in the original packages or in broken packages, shall be included or considered for the purpose of computing such license tax.

Amd. Sec. 2, Ch. 150, L. 1923; Amd. Sec. 2, Ch. 186, L. 1925; Amd. Sec. 2, Initiative Measure No. 31, effective January 1, 1927.

This section as amended by chapter 150, L. 1923, imposing a license tax upon distributors of and dealers in gasoline, is so arbitrary, unjust and unreasonably discriminatory against dealers in Montana

manufactured gasoline and in favor of those handling gasoline imported into the state, that it is void as denying to the former the equal protection of the law. State v. Sunburst Refining Co., 73 Mont. 68, 235 Pac. 428.

Applied with section 2382 in State v. Sunburst Refining Co., 76 Mont. 472, 248 Pac. 186.

2384. Quarterly payment of tax—Delinquencies. Such license tax shall be paid in quarterly installments for the quarters ending, respectively March 31st, June 30th, September 30th, and December 31st, in each year, beginning with the quarter ending June 30, 1925, and the amount of such license tax becoming due for each quarter shall be paid to the state treasurer within thirty days after the end of the quarter for which the same is due. Any such taxes not paid within the time herein provided for shall be delinquent and a penalty of ten per cent thereof shall be added thereto, and the whole thereof shall bear interest at the rate of one per cent per month from the date of delinquency until paid.

Amd. Sec. 3, Ch. 186, L. 1925.

2389. Penalty for failure to make statement—Suit for collection. If any distributor or dealer shall fail, neglect, or refuse to make any statement required by section 2386 within the time therein provided, the state board of equalization shall, immediately after such time has expired proceed to inform itself as best it may, regarding the matters and things required to be set forth in such statement, and from such information as it may be able to obtain, to make a statement showing such matters and things, and determine and fix the amount of the license tax due the state from such delinquent distributor or dealer for such quarter adding to the amount of such license tax a penalty of five per cent thereof for the first failure, neglect, or refusal; ten per cent for the second; fifteen per cent for the third, and twenty-five per cent for the fourth and each subsequent failure, neglect, or refusal and deliver such statement to the state treasurer, who shall proceed to collect the amount of such license tax with penalty added thereto, and interest on the whole thereof, at the rate of twelve per cent per annum from the date of the making of such statement by the state board of equalization until paid. Upon request of the state treasurer it shall be the duty of the attorney general to commence and prosecute the final determination in any court of competent jurisdiction, an action at law to collect the same. All license taxes due from any distributor or dealer under the provisions of this act, together with all penalties and interest thereon shall be a prior lien upon any and all property used by such distributor or dealer in connection with such business or operation subject to such license taxes, whether such property is owned by such distributor or dealer or not, which lien shall have precedence over any other lien, claim or demand, and may be enforced in the name of the state of Montana in the same manner as other liens are enforced at law. No action shall be maintained by any such

distributor or dealer to review, revise or change such statement in any particular or to enjoin the collection of the license tax, or any part thereof, and such distributor or dealer shall have no right to pay such license tax, or any part thereof, under protest, and maintain any action to recover the same.

Amd. Sec. 4, Ch. 186, L. 1925.

2392. Expenditure proceeds tax in highway construction. All money received by the state treasurer in payment of license taxes under the provisions of this act shall be deposited by him and credited to the state highway fund. All money so collected and deposited in the state highway fund shall be used and expended by the state highway commission in the construction, reconstruction, betterment, maintenance, administration and engineering on the federal highway system of highways in this state selected and designated under the provisions of the federal aid act, approved July 11, 1916, and the federal highway act approved November 9, 1921, and all amendments thereto, and for the purpose of construction, reconstruction, betterment, maintenance, administration and engineering of highways leading from each county seat in the state to said federal highway system of federal aid roads where such county seat is not on said system, and for the purpose of construction, reconstruction, betterment, maintenance, administration and engineering of such other roads as have been or may be authorized by the laws of Montana. Provided, that the total net cost to the state for administration and engineering on the federal aid work contemplated by this act shall not exceed for any fiscal year eight per cent of the total of state, federal aid and other available funds expended under the supervision of the state highway commission. It shall be the duty of the state highway commission, in expending such money, to carry forward construction from year to year, using the money expended through the matching up of federal aid allotments to Montana upon the said federal highway system of highways in the various parts of the state, so far as it may be possible within a reasonable development of the whole federal highway system, in proportion to the amount of mileage still to be constructed in the various sections of that system.

Amd. Sec. 3, Ch. 150, L. 1923; Amd. Sec. 5, Ch. 186, L. 1925; Amd. Sec. 3, Initiative Measure No. 31, effective January 1, 1927.

Cited in *State v. Sunburst Refining Co.*, 73 Mont. 68, 75, 235 Pac. 428.

2393, 2394. Relating to apportionment of gasoline license tax.

Rep. Sec. 4, Ch. 150, L. 1923.

2396.1. Definition of terms. As used in this act, the following definitions shall apply:

(1) The word "gasoline" means:

(a) The volatile substance produced from petroleum, natural gas, oil shales or coal heretofore sold under the name of "gasoline," and sold or used for producing motor power for internal combustion engines or for producing power for propelling motor vehicles.

(b) Any other volatile product or substance of not less than forty-six (46) degrees Taglianbes Baume test sold or used for producing motor power for internal combustion engines or for producing power for propelling motor vehicles.

(2) The word "person" means any person, firm, association, joint stock company, syndicate, or corporation.

(3) The words "motor vehicle" mean all vehicles operated or propelled upon the public highways or streets of this state, in whole or in part by the combustion of gasoline.

(4) The word "use" shall include and mean the operation of motor vehicles upon the public roads or highways of the state of Montana, or of any political subdivision thereof.

(5) The word "import" shall include and mean to receive into any person's possession or custody first after its arrival and coming to rest at destination within the state of Montana of any gasoline shipped or transported into this state from point of origin without this state.

(6) The word "handle" means to produce, refine, manufacture, compound or import gasoline, or to purchase gasoline for one's own use, upon which the license tax herein imposed has not been paid.

(7) The word "dealer" means and includes any person who engages in the business in the state of Montana of producing, refining, manufacturing or compounding or of purchasing in this state, or of importing into this state, gasoline for sale or use in this state. Such gasoline, for the purpose of this act, shall be deemed to be "handled" by such dealer.

En. Sec. 1, Ch. 19, L. 1927.

2396.2. Gasoline dealers' license tax. Every dealer shall pay to the state treasurer a license tax for engaging in and carrying on such business in this state in an amount equal to three cents (3c) for each gallon of gasoline handled by him in this state while engaging in such business, as hereinbefore defined; provided that all gasoline delivered or distributed by any dealer or to any of his service stations in this state, or to his or to any other motor vehicles operated or intended to be operated on or over the public roads or highways in this state, or delivered or distributed in any other manner, shall be deemed to have been handled while engaged in such business as dealer, as hereinbefore defined, and shall be treated and considered in computing such license tax in the same manner as though the same had been delivered or distributed to dealers or other persons; provided, further, that nothing herein contained shall impose any license tax, or require the payment of more than three cents (3c) per gallon as license tax upon any gasoline handled within the state of Montana, nor upon any such gasoline after having once been included in the computing of such license tax hereunder; and provided, further, that no such license tax shall be paid by any dealer on account of any gasoline moving in or on account of sales of gasoline constituting interstate or foreign commerce.

En. Sec. 2, Ch. 19, L. 1927.

2396.3. Dealers' statements—Amount of tax. Each dealer shall, not later than the fifteenth day of each calendar month, beginning with the

next calendar month after this act has become effective, render a true statement to the state treasurer of the state of Montana, and a duplicate thereof to the state board of equalization, duly signed and sworn to, of all gasoline handled by him in this state during the preceding calendar month, and containing such other information as the state board of equalization may require, and shall accompany such statement with the payment to the state treasurer of a license tax, in an amount equal to three cents (3c) per gallon for each gallon of gasoline so handled, and not paid by any other dealer in this state, for engaging in and carrying on such business in this state. Any dealer engaged in or carrying on his business at more than one place or location in this state may include all such places of business in one statement.

En. Sec. 3, Ch. 19, L. 1927.

2396.4. Rules of board of equalization. The state board of equalization shall have the power, and it shall be its duty from time to time to adopt, publish and enforce such rules and regulations not inconsistent herewith as it may deem requisite for the purpose of carrying out the provisions of this act.

En. Sec. 4, Ch. 19, L. 1927.

2396.5. Penalty for delinquency. Any such license tax not paid within the time herein provided for shall be delinquent and a penalty of ten per cent (10%) thereof shall be added thereto and the whole thereof shall bear interest at the rate of one per cent (1%) per month from the date of delinquency until paid.

En. Sec. 5, Ch. 19, L. 1927.

2396.6. Dealers to keep records. Each dealer shall keep a record in such form as the state board of equalization shall require showing the total number of gallons handled by such dealer within this state, and such other information as the state board of equalization may require.

En. Sec. 6, Ch. 19, L. 1927.

2396.7. Penalty. Each dealer, who fails, neglects, or refuses to make and file the statements required by this act in the manner or within the time herein provided, or who shall make any false statement with reference to his said business of handling gasoline, shall be deemed guilty of having committed a misdemeanor and upon conviction thereof shall be fined in any amount not exceeding one thousand dollars (\$1,000) or imprisonment in the county jail for not to exceed six months, or shall be punished by the imposition of both such fine and imprisonment.

En. Sec. 7, Ch. 19, L. 1927.

2396.8. Fixing tax in absence of statement—Penalties—Prosecution—Liens. If any dealer or other person subject to the payment of such license tax shall fail, neglect, or refuse to make any statement required by this act, or shall fail to make payment of such license tax within the time herein provided, the state board of equalization shall, immediately after such time has expired, proceed to inform itself as best it may re-

garding the matters and things required to be set forth in such statement and from such information as it may be able to obtain, to make a statement showing such matters and things and determine and fix the amount of the license tax due the state from such delinquent dealer, and shall add thereto a penalty of five per cent (5%) thereof for the first failure, neglect or refusal; ten per cent (10%) for the second; fifteen per cent (15%) for the third; and twenty-five per cent (25%) for the fourth, and each subsequent failure, neglect and refusal, which shall be in addition to the ten per cent penalty hereinbefore provided for nonpayment of such license tax within the time herein provided. Said license tax and the penalties added thereto shall bear interest at the rate of one per cent (1%) per month from the date such statements should have been made and said license tax paid. The state treasurer of the state of Montana shall then proceed to collect such license tax with penalties and interest. Upon the request of the state treasurer it shall be the duty of the attorney general to commence and prosecute to final determination in any court of competent jurisdiction an action at law to collect such license tax. All license taxes due from any dealer under the provisions of this act, together with all penalties and interest thereon, shall be a lien upon any and all property of such dealer or other person upon the filing of a duplicate copy of the statement so made by the state board of equalization, or a certified copy of any statement filed with said board, in the office of the county clerk of the county where such property is situated, which lien shall have precedence over any other claim, lien or demand thereafter filed or recorded and which may be enforced in the name of the state of Montana in the same manner as other liens are enforced at law. No action shall be maintained to enjoin the collection of such license tax or any part thereof.

En. Sec. 8, Ch. 19, L. 1927.

2396.9. Inspection of records. The books and records of every dealer shall be open and subject to inspection by the state board of equalization or any of its employees or assistants during business hours so far as may be necessary to ascertain the amount of license tax due.

En. Sec. 9, Ch. 19, L. 1927.

2396.10. Dealers' invoices. Each dealer in this state handling any gasoline as defined in this act, shall, at the time of such handling, make out and deliver to the purchaser or consignee thereof an invoice in which shall be stated the number of gallons of gasoline covered by such invoice and that the license tax on same has been paid or will be paid to the treasurer of the state of Montana within fifteen (15) days after the current month, as provided in this act.

En. Sec. 10, Ch. 19, L. 1927.

2396.11. Export gasoline excepted. No gasoline exported out of the state of Montana shall be included in the computation of any dealer's license tax herein provided for.

En. Sec. 11, Ch. 19, L. 1927.

2396.12. Railroad reports. Each railway company or other common carrier hauling, transporting, or shipping into or out of the state of

Montana from or to any other state or foreign country any gasoline shall, on or before the 15th day of each calendar month, make and file with the state treasurer of the state of Montana, a statement under oath showing the number of gallons of gasoline contained in each such shipment for the preceding calendar month, the names and addresses of the consignor and consignee, with date of delivery to such consignee, and shall make and file a duplicate of such statement with the state board of equalization.

En. Sec. 12, Ch. 19, L. 1927.

2396.13. Disposal of tax moneys—Limitations. All money received by the state treasurer in payment of license taxes under the provisions of this act, shall be deposited by him in, and credited to, the state highway fund. All money so collected and deposited in the state highway fund shall be used and expended by the state highway commission in the construction, reconstruction, betterment, maintenance, administration and engineering on the federal highway system of highways in this state selected and designated under the provisions of the federal aid act, approved July 11, 1916, and the federal highway act approved November 9, 1921, and all amendments thereto, and for the purpose of construction, reconstruction, betterment, maintenance, administration and engineering of highways leading from each county seat in the state to said federal highway system of federal aid roads where such county seat is not on said system, and for the purpose of construction, reconstruction, betterment, maintenance, administration and engineering of such other roads as have been or may be authorized by the laws of Montana, for the collection and enforcement of this act, and for the purpose of payment of refunds and drawbacks authorized by law to be made to purchasers of gasoline used in this state for other purposes than the propulsion of motor vehicles over the public highways and streets of this state; provided, that the total cost to the state for administration and engineering on the federal aid work contemplated by this act shall not exceed for any fiscal year eight per cent (8%) of the total of state, federal aid and other available funds expended under the supervision of the state highway commission.

En. Sec. 13, Ch. 19, L. 1927.

2396.14. Effect partial invalidity act. If any section, sentence, clause or phrase of this act is for any reason held to be unconstitutional or invalid such decision shall not affect the validity of the remaining portions of this act. The legislative assembly of the state of Montana hereby declares that it would have passed this act irrespective of the fact that any one or more sections, sentences, clauses or phrases may be declared unconstitutional or invalid.

En. Sec. 14, Ch. 19, L. 1927.

2396.15. Penalties. Any person engaged in the business of handling gasoline as defined in this act, after the license tax imposed by this act, or any part thereof, has been delinquent as provided by this act, or the same has not been paid under protest, shall, in addition to the penalties hereinbefore provided, be deemed guilty of a misdemeanor for each offense, and shall upon conviction thereof, be punished by a fine in any

sum not more than five hundred dollars (\$500) or imprisonment in the county jail for not more than six (6) months, or by both such fine and imprisonment.

En. Sec. 15, Ch. 19, L. 1927.

2396.16. Distribution of state highway fund. That for the purpose of apportioning the expenditure for highway construction purposes of the moneys of the state highway fund, including proceeds received from the license tax upon dealers in gasoline and motor fuels provided for by law, the state is hereby divided into the following twelve districts and the counties in each district are as follows:

District No. 1. Lincoln, Flathead and Lake;

District No. 2. Glacier, Toole, Liberty, Hill and Blaine;

District No. 3. Phillips, Valley, Daniels, Sheridan and Roosevelt;

District No. 4. McCone, Richland, Dawson, Prairie and Wibaux;

District No. 5. Fergus, Garfield and Petroleum;

District No. 6. Pondera, Teton, Chouteau, Cascade and Judith Basin;

District No. 7. Lewis and Clark, Jefferson and Broadwater;

District No. 8. Sanders, Mineral, Missoula, Ravalli, Granite and Powell;

District No. 9. Beaverhead, Deer Lodge, Silver Bow and Madison;

District No. 10. Park, Gallatin, Sweet Grass, Meagher and Wheatland;

District No. 11. Golden Valley, Musselshell, Stillwater, Yellowstone, Carbon, Big Horn and Treasure;

District No. 12. Rosebud, Custer, Fallon, Powder River and Carter.

En. Sec. 1, Ch. 18, L. 1927.

2396.17. Expenditure funds under federal aid act—Limitations. All moneys of the state highway fund, including moneys arising from the license tax upon dealers in gasoline and motor fuels, but excluding moneys being held in such fund for refund or drawback purposes and expense of collection and enforcement, shall be used and expended by the state highway commission in the construction, reconstruction, betterment, maintenance, administration and engineering on the federal highway system of highways in this state selected and designated under the provisions of the federal aid act, approved July 11, 1916, and the federal highway act approved November 9, 1921, and all amendments thereto, and for the purpose of construction, reconstruction, betterment, maintenance, administration and engineering of highways leading from each county seat in the state to said federal highway system of federal aid roads where such county seat is not on said system, and for the purpose of construction, reconstruction, betterment, maintenance, administration and engineering of such other roads as have been or may be authorized by the laws of Montana. Provided, that the total net costs to the state for administration and engineering on the federal aid work contemplated by this act shall not exceed for any fiscal year eight per cent (8%) of the total of state, federal aid and other available funds expended under the supervision of the state highway commission. It shall be the duty of the state highway commission, in expending such money, to carry forward construction from year to year, using the money expended

through the matching up of federal aid allotments to Montana upon the said federal highway system of highways in the various parts of the state in proportion to the amount of mileage still to be constructed in the various sections of that system as defined in section one of this act; provided that nothing in this act shall be construed to conflict with said federal aid highway acts and the rules by which they are administered.

En. Sec. 2, Ch. 18, L. 1927.

2396.18. Percentages uncompleted mileage. The total uncompleted mileage in each of said districts bears the following percentages respectively to the total uncompleted mileage of said federal highway system in this state:

In District No. 1, 8.07 per cent; in District No. 2, 5.65 per cent; in District No. 3, 7.68 per cent; in District No. 4, 6.38 per cent; in District No. 5, 7.07 per cent; in District No. 6, 8.36 per cent; in District No. 7, 11.44 per cent; in District No. 8, 10.08 per cent; in District No. 9, 8.18 per cent; in District No. 10, 7.77 per cent; in District No. 11, 8.63 per cent; in District No. 12, 10.69 per cent.

En. Sec. 3, Ch. 18, L. 1927.

2396.19. Refund certain gasoline license taxes. That any person who shall purchase and use any gasoline, with reference to which there has been paid, under the laws of this state licensing dealers in gasoline, a tax at the rate of three cents (3c) per gallon, for the purpose of operating or propelling stationary gas engines, tractors used for agricultural purposes other than on the public highways or streets of this state, motor boats, aeroplanes or air craft, or for cleaning or dyeing, or for any commercial use other than propelling vehicles upon any of the public highways or streets of this state, shall be allowed and paid as a refund or drawback an amount of money equal to three cents (3c) multiplied by the number of gallons of gasoline so purchased and used, upon presenting to the state board of equalization within the time allowed by law, a sworn statement, accompanied by the original invoices showing such purchase and use, which statement shall set forth the total amount of such gasoline so purchased and used by such consumer other than for propelling vehicles operated upon any of the public highways or streets of this state, and which statement shall contain such additional information as may be required by the state board of equalization on forms to be furnished by said board. All such applications for refunds or drawbacks shall be filed with the state board of equalization within ninety (90) days after the date on which such gasoline was purchased as shown by such invoices. The state board of equalization shall have sixty (60) days thereafter within which to make such investigation as it may desire, to ascertain the truths of the statements made. If the statement is found to be correct by said state board of equalization, said refund or drawback shall be paid out of the state highway fund in the same manner as other claims against said fund. Should the state board of equalization, after investigation, find that the statement so made by said consumer is false and erroneous in any part, it shall so report to the state treasurer and shall at the same time make and file with the state treasurer a

correct statement of the amount of gasoline so used by such purchaser, and the state treasurer shall then so pay to such purchaser the amount found by the state board of equalization to be due him.

En. Sec. 1, Ch. 17, L. 1927.

2396.20. Penalty for false statement. Any person who shall make any false statement in connection with the application for such refund or who shall collect or cause to be repaid to him, or to any other person, any such refund without being entitled to the same under the provisions of this act, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not to exceed the sum of one thousand dollars (\$1,000) or by imprisonment in the county jail for not more than six (6) months, or by both such fine and imprisonment.

En. Sec. 2, Ch. 17, L. 1927.

CHAPTER 186.

OIL PRODUCERS' LICENSE TAX.

2397. "Person" defined.

The tax of one per cent of the gross value of crude oil exacted from persons engaged in producing petroleum within the state, by sections 2397-2408, is not a property tax or imposed for regulatory purposes under the police power, but is a revenue measure and the exaction is a license or occupation tax. *Mid-Northern Oil Co. v. Walker et al.*, 65 Mont. 414, 211 Pac. 353.

An oil company operating under leases from the United States government and

assigned to it, under the terms of which the lessees were given the exclusive right to explore for, extract and dispose of oil and gas in lands covered by homestead entries for which patents had not issued, is not such an agency or instrumentality of the federal government as to render the license or occupation tax imposed by sections 2397-2408 invalid. *Mid-Northern Oil Co. v. Walker et al.*, 65 Mont. 414, 211 Pac. 353.

2398. Oil license tax—Amount—Development work excluded. Every person engaging in or carrying on the business of producing, within this state, petroleum, or other mineral or crude oil, or engaging in or carrying on the business of owning, controlling, managing, leasing or operating within this state any well or wells from which any merchantable or marketable petroleum or other mineral or crude oil is extracted or produced, sufficient in quantity to justify the marketing of the same, must, for the year 1923, and each year thereafter, when engaged in or carrying on any such business in this state, pay to the state treasurer, for the exclusive use and benefit of the state of Montana, a license tax for engaging in and carrying on such business in an amount equal to two per centum of the total gross value of all petroleum and other mineral or crude oil produced by such person within this state during such year; but in determining the amount of such tax there shall be excluded from consideration all petroleum, or other crude or mineral oil produced and used by such person during such year in connection with his operations in prospecting for, developing and producing such petroleum, crude or mineral oil; provided, however, that nothing in this act shall be construed as requiring laborers or employees, hired or employed by any person, to drill any oil well, or to work in or about any oil well, or prospect or explore for, or do any work for the purpose of developing any petroleum or other mineral or crude oil to pay such license

tax, nor shall any work be done, or the drilling of any well or wells, for the purpose of prospecting or exploring for petroleum or other mineral or crude oils, or for the purpose of developing same, be deemed to be engaging in or carrying on of any such business; provided, further, that in the doing of any such work, or in the drilling of any oil well, or in such prospecting, exploring or development work, any merchantable or marketable petroleum or other mineral or crude oil in excess of the quantity required by such person for carrying on such operation shall be produced sufficient in quantity to justify the marketing of the same, than [then] such work, drilling, prospecting, exploring or development work shall be deemed to be the engaging in and carrying on of such business within this state within the meaning of this section.

Amd. Sec. 1, Ch. 67, L. 1923.

2399. Payment and distribution of tax. Such license tax shall be paid in semi-annual installments for the semi-annual periods ending respectively June 30th and December 31st of each year, beginning with the semi-annual period ending June 30, 1923, and the amount of the license tax for each semi-annual period shall be paid to the state treasurer within thirty (30) days after the end of each semi-annual period. On January 31st of each year, the state treasurer shall transfer to the common school interest and income fund of the state a sum equal to twenty-five per cent (25%) of the total amount of such license taxes collected during the preceding twelve months, the same to be apportioned in the same way as other moneys in the said fund and at the same time; the state treasurer shall also apportion a sum equal to twenty-five per cent (25%) of such license taxes collected during such preceding twelve months to the county and district high schools of the state on the basis of the aggregate number of days' attendance during the preceding school year in each of said high schools respectively; and fifty per cent (50%) of such taxes shall be credited to the general fund of the state when received by the state treasurer.

Amd. Sec. 2, Ch. 67, L. 1923.

2400. Gross value of product—How determined. The total gross value of all petroleum, and other mineral or crude oil produced each year shall be determined by taking the total number of barrels thereof produced or for pumping said petroleum, or other mineral value at the mouth of the well during the month the same is produced, as determined by the state board of equalization; provided, however, that in computing the total number of barrels of petroleum, and other mineral or crude oil produced, there shall be deducted therefrom so much thereof as is used by such person in connection with the operation of the well from which said oil is produced or for pumping said petroleum, or other mineral or crude oil from the said well to a tank or pipe line.

Amd. Sec. 3, Ch. 67, L. 1923.

2401. Producers to file reports. Each and every person engaged in such business in the state of Montana at the date when this act becomes effective, must, not later than the thirtieth day of April, 1923, and every person who shall engage in such business at any time after the

date when this act becomes effective, must, immediately upon engaging in such business, file with the state board of equalization, a certificate and statement, on forms prescribed by the state board of equalization, which shall contain the name under which such person is engaging in and carrying on such business in this state, giving the place or places of business and location of the well or wells owned, leased, controlled or operated by such person; the name and address of the managing agent in this state, if an association, corporation, joint-stock company, or syndicate, or if a firm or copartnership, the names and addresses of the persons composing the same; if an association, joint-stock company, corporation or syndicate, under the laws of what state organized, its principal place of business, and the names and addresses of its principal officers; and such other information as the board may deem necessary.

Amd. Sec. 4, Ch. 67, L. 1923.

2402. Record of product. Every such person shall keep a record in such form as the state board of equalization may require, of all petroleum and other mineral or crude oil extracted or produced by such person in this state, and such records shall at all times during the business hours of the day be subject to inspection by the state board of equalization, its members, agents, or employees. It shall be the duty of railroad companies, pipe-line and transportation companies carrying crude or mineral oil, to furnish to the state board of equalization, whenever requested so to do, all data relative to the shipment of said products, that may be required to properly enforce the provisions of this act. The failure of any railroad company, pipe-line, and transportation companies to comply with the provisions of this section shall make such companies liable to a penalty of one hundred (\$100) dollars for each day it shall fail to furnish such statement.

Amd. Sec. 5, Ch. 67, L. 1923.

2403. Statement of quarterly product—Verification. Each and every person must, within thirty days after the quarter ending March 31, 1923, and within thirty days after the end of each following quarter, make out, in duplicate, on forms prescribed by the state board of equalization, and deliver to the state treasurer, a statement showing the total number of barrels of merchantable or marketable petroleum, and other mineral or crude oil produced or extracted by such person in the state of Montana during each month of such quarter and during the whole quarter, the average value thereof during each month and the total value thereof for the whole quarter, together with the total amount due to the state as license taxes for such quarter; and must, within such thirty days, and at the same time such statement is delivered to the state treasurer, pay to the state treasurer the amount of the license taxes shown by such statement to be due to the state of Montana for the quarter for which such statement is made. Such statement must be signed and verified by the oath of the individual or individuals, or by the president, vice-president, treasurer, assistant treasurer, or managing agent in this state of the association, corporation, joint-stock company or syndicate making the same. Any such person engaged in carrying on such business at more than one place in this state, or owning, leasing, controlling, or operating

more than one oil well in this state, may include all thereof in one statement. The state treasurer shall receive and file all such statements and collect and receive from such person making and filing a statement with him the amount of tax payable by such person, if any, as the same shall appear from the face of the statement. The state treasurer shall indorse on each statement as soon as the same is received by him, the date when so received, the name and postoffice address of the person from whom received; and the amount of tax, if any, paid by such person; and he must number such statement consecutively, beginning with number one (1) for each year followed by the year. The state treasurer shall keep a book in such form as shall be approved by the state board of equalization, in which he shall enter each statement filed with him in the order in which received and filed, the number thereof, date of filing, name of person making the return, and the amount of tax, if any, paid by such person, which book shall be designated "State treasurer's record of oil production license tax." The state treasurer shall within ten days after the end of each month deliver over to the state board of equalization all statements filed with him and not already delivered to said board, and such statements shall then be filed in the office of, and become a part of the records of the state board of equalization. It shall be the duty of the state board of equalization to examine each of such statements and compute the taxes thereon, and the amount so computed by the board shall be the taxes imposed, assessed against and payable by the taxpayer making the statement for the quarter for which the statement is filed. If the tax found to be due shall be greater than the amount paid, the excess shall be paid by the taxpayer to the state board of equalization within ten days after written notice of the amount of the deficiency shall be mailed by the board of equalization to such taxpayer. Provided, that if the tax imposed shall be less than the amount paid, the difference must be refunded to the person making such payment.

Amd. Sec. 6, Ch. 67, L. 1923.

2404. Unlawful—Failure to make statement. It shall be unlawful for any such person to fail, neglect or refuse to file any statement or certificate required by this act in the manner or within the time herein required, or to make such statement false in any particular.

Amd. Sec. 7, Ch. 67, L. 1923.

2405. Procedure to compute and collect tax in absence of statement. If any such person shall fail, neglect or refuse to file any statement required by section 2403 of this code, within the time therein required, the state board of equalization shall, immediately after such time has expired, proceed to inform itself, as best it may, regarding the number of barrels of petroleum and other mineral or crude oil extracted and produced by such person in this state during such quarter, and during each month thereof, and the average value thereof during each such month, and shall determine and fix the amount of the license taxes due to the state from such person for such quarter and shall make out a statement, in duplicate, showing the same, and shall add to the amount of such license taxes a penalty of twenty-five per cent thereof, and deliver one of such

statements to the state treasurer, who shall proceed to collect the amount of such license taxes, with the penalty added thereto and interest on the whole thereof at the rate of twelve per cent, per annum from the date of the making of such statement by the state board of equalization until paid. Upon request of the state treasurer, it shall be the duty of the attorney general to commence and prosecute to final determination in any court of competent jurisdiction, an action at law to collect the same.

Amd. Sec. 8, Ch. 67, L. 1923.

2406. Disposal of license tax.

Rep. Sec. 2A, Ch. 67, L. 1923.

CHAPTER 189.

TRANSIENT RETAIL MERCHANTS', HUCKSTERS' AND ITINERANT VENDORS' LICENSES.

2421. Itinerant vendors to obtain license.

Rep. Sec. 9, Ch. 184, L. 1925.

For text treatment of this subject see vol. 13 Cal. Jur. 288.

2421.1. Transient retail merchant defined. Every person, firm or corporation, acting for himself or itself, or representing any other person, firm or corporation who or which brings into temporary premises, into any county of this state, a stock of goods, wares or articles of merchandise, or notions, or other articles of trade, and who or which solicits, sells or offers to sell, or exhibit for sale, such stock of goods, wares or articles of merchandise or notions or other articles of trade at retail, is within the meaning of this act, a transient retail merchant, and such definition shall continue to apply until such person, firm or corporation shall be continuously engaged at such particular place in the county for a period of one year.

"Temporary premises" within the meaning of this act shall be continued to include any hotel, rooming-house, storeroom, building or any part of any building whatsoever, tent, vacant lot, freight station, railroad car, or any public or quasi-public place, temporarily occupied for such business.

En. Sec. 1, Ch. 182, L. 1925.

2421.2. Amount of license. The amount to be paid for the license to conduct the business of a "transient retail merchant" shall be the sum of five dollars (\$5) for each week or fraction thereof, to be paid in advance to the county treasurer of the county in which such business is conducted.

En. Sec. 2, Ch. 182, L. 1925.

2421.3. Application for license. Every transient retail merchant desiring to do business in any county of this state, must before commencing such business, file with the county treasurer of such county, on a form to be provided by such treasurer, an application in writing subscribed

and sworn to by such applicant before an officer in this state authorized to take oaths, which application shall set forth:

1. Name of applicant.
2. His place of permanent residence.
3. His local headquarters, if any.
4. Time of his arrival in the county.
5. County from which last license, if any, received.
6. Whether acting as principal, agent, or employee.
7. If acting as agent or employee, the name and place of business of his principal or employer.
8. If any agent, as part of application, principal's acknowledgment of such agency must accompany application.
9. Brief descriptive list of articles to be offered for sale, or services to be performed.
10. Whether payments or deposits of money are collected when orders are taken, or in advance of final delivery.
11. The number of weeks for which license is requested.

At the time of filing the application, such transient retail merchant must accompany the application above provided with the sum specified in the preceding section as a license fee except as provided in the following section.

En. Sec. 3, Ch. 182, L. 1925.

2421.4. Provision for bond in lieu of license. In lieu of the license fee prescribed in section 2 of this act, every transient retail merchant who filed with the application required in section 3 an affidavit indicating bona fide intention to become a permanent merchant and continue in business for a period longer than one year, shall upon filing and approval of the bond herein provided for, receive from the county treasurer a license permitting the conduct of such business for a period of one year. Such bond shall be a surety bond in the penal sum of one thousand dollars (\$1,000) to said county treasurer executed by a surety company licensed to do business in this state or by two responsible freeholders residing in the county and whose names appear upon the assessment-roll of said county (or in lieu thereof a cash bond of equal amount) and to be approved by said county treasurer conditioned upon the performance of the intention to become a permanent merchant and continue in business for a period longer than one year and to insure the payment of license fees for the period such business is actually conducted, if not in fact a bona fide permanent business, and further conditioned, upon the delivery of goods ordered or sold in accordance with the terms of such order or sale. Any person aggrieved by any action or misrepresentation of any such transient retail merchant shall have a right of action on said bond for the recovery of his money advanced or damage, and costs. Such bond shall remain in full force and effect for a period of six months after the expiration of the one-year period.

En. Sec. 4, Ch. 182, L. 1925.

2421.5. Issuance of license indorsement and filing of application. Upon filing of the application prescribed in section 3, and the payment of

the fee prescribed in section 2, the county treasurer shall issue and deliver to the applicant, in the county a license to carry on the business described in such application in the county in which such license is so issued, for the period for which such license is requested.

Upon filing of the application prescribed in section 3, and the bond prescribed in section 4, the county treasurer shall issue and deliver to the applicant a license to carry on the business described in such application in the county [in] which such license is so issued, for a period of one year from the date of such license.

Such licenses shall be nontransferable and shall have printed across the face thereof in bold type the words "Not Transferable."

The county treasurer shall indorse upon each application the date of issuance of the license and the duration thereof and shall immediately file such application with the county clerk and recorder of his county, who shall file the same in his office and keep an appropriate index thereof, which shall show the date filed, the name of applicant, and an appropriate reference to the file number by which said application may be found.

En. Sec. 5, Ch. 182, L. 1925.

2421.6. Penalty for failure to exhibit license. Every transient retail merchant doing business under the provisions of this act shall at all times keep said license conspicuously posted in said place of business, and any such transient retail merchant who shall fail to post and keep posted his license as above provided is guilty of a misdemeanor and shall be fined not less than ten dollars (\$10) nor more than twenty-five dollars (\$25) for each offense.

En. Sec. 6, Ch. 182, L. 1925.

2421.7. Penalty for doing business without license. Every transient retail merchant as herein defined, doing business without first obtaining a license so required by this act is guilty of a misdemeanor, and shall be punished accordingly as provided in the Penal Code.

En. Sec. 7, Ch. 182, L. 1925.

2421.8. Interpretation of provisions of law. Nothing in this act contained, is intended to operate so as to interfere with the power of the United States to regulate commerce between the states as such power is defined by the supreme court of the United States. Nothing in this act contained is intended to operate so as to impair or abridge, or interfere with, the right of any incorporated municipality within this state, to enact local laws or ordinances dealing with the subject of this act, nor shall the provisions of this act apply to duly constituted "city markets" operated by authority of any city or town.

En. Sec. 8, Ch. 182, L. 1925.

2421.9. Huckster defined. Any person engaged or employed in the business of buying and selling farm products who disposes of such products by selling them at retail to consumers by going from house to house, is within the meaning of this act, a huckster.

En. Sec. 1, Ch. 183, L. 1925.

2421.10. Amount of license. Every huckster desiring to do business in any county of this state must, before commencing such business, pay to the county treasurer of such county, the sum of five dollars (\$5) for a license to conduct such business for a period of six months from the date such license is issued.

En. Sec. 2, Ch. 183, L. 1925.

2421.11. Application for license. Every huckster desiring to do business in any county of this state, must before commencing such business, file with the county treasurer of such county, on a form to be provided by such treasurer an application in writing, which application shall set forth:

1. Name of applicant.
2. His place of permanent residence.
3. Whether acting as principal, agent or employee.
4. If acting as agent or employee, the name and place of business of his principal or employer.

At the time of filing the application, such huckster must accompany the application above provided with the sum specified in the preceding section as a license fee.

En. Sec. 3, Ch. 183, L. 1925.

2421.12. Issuance of license. Upon filing of the application specified in section 3 and upon the payment to the county treasurer of the sum specified in section 2 of this act, the county treasurer shall issue and deliver to the applicant, a license to carry on the business of a huckster for a period of six months from the date of such license. Such license shall be nontransferable and shall have printed across the face thereof in bold type the words "Not Transferable."

The county treasurer shall indorse upon each application the date of issuance of the license and shall immediately file such application with the county clerk and recorder of his county who shall file the same in his office and keep an appropriate index thereof, which shall show the date filed, the name of the applicant, and an appropriate reference to the file number by which said application may be found.

En. Sec. 4, Ch. 183, L. 1925.

2421.13. Penalty for failure to exhibit license. Every such huckster doing business under the provisions of this act must upon demand of any interested person exhibit his license and permit the same to then and there be read by the person making such demand; and any such huckster who shall refuse or fail to exhibit his license as above provided is guilty of a misdemeanor and shall be fined not less than ten dollars (\$10) nor more than twenty-five dollars (\$25).

En. Sec. 5, Ch. 183, L. 1925.

2421.14. Penalty for doing business without license. Every huckster as herein defined, doing business without first obtaining a license as required by this act, is guilty of a misdemeanor, and shall be punished accordingly, as provided in the Penal Code.

En. Sec. 6, Ch. 183, L. 1925.

2421.15. Interpretation of provisions of law. Nothing in this act contained is intended to operate so as to impair or abridge, or interfere with, the right of any incorporated municipality within this state, to enact local laws or ordinances dealing with the subject of this act. Nothing in this act shall be construed so as in any manner to impair, abridge or interfere with, the right of a grower or producer of farm products to dispose of such products grown or produced by him.

En. Sec. 7, Ch. 183, L. 1925.

2421.16. Itinerant vendor defined. Any person engaged or employed in the business of retailing to consumers by going from consumer to consumer, either on the streets or to their places of residence or employment, and there soliciting, selling, or offering to sell, or exhibiting for sale, by sample, by catalogue, or otherwise, or taking orders for future delivery of any goods, wares or merchandise, or for services to be performed in the future, is within the meaning of this act, an "itinerant vendor"; a "consumer" is "one who uses, and by using, destroys the value of the article purchased." This act shall in no way effect [affect] any person, firm, copartnership or corporation with a commercial rating and who maintain a permanent place of business in the state of Montana.

En. Sec. 1, Ch. 184, L. 1925.

2421.17. Amount of license. For the purpose of defraying the expenses of regulation under this act every itinerant vendor desiring to do business in any county of this state must before commencing such business, pay to the county treasurer of such county, the sum of five dollars for a license to conduct such business for a period of ninety days from the date such license is issued.

En. Sec. 2, Ch. 184, L. 1925.

2421.18. Application for license. Every itinerant vendor desiring to do business in any county of this state, must before commencing such business file with the county treasurer of such county, on a form to be provided by such treasurer, an application in writing subscribed and sworn to by such applicant before an officer in this state authorized to take oaths, which application shall set forth;

1. Name of applicant.
2. His place of permanent residence.
3. His local headquarters, if any.
4. Time of his arrival in the county.
5. County from which last license, if any, received.
6. Whether acting as principal, agent or employee.
7. If acting as agent or employee, the name and place of business of his principal or employer.
8. If an agent, as part of application, principal's acknowledgment of such agency must accompany application.
9. Brief descriptive list of articles to be offered for sale, or service to be performed.
10. Whether payments or deposits of money are collected when orders are taken, or in advance of final delivery.

At the time of filing the application, such itinerant vendor must accompany the application above provided with the sum specified in the preceding section as a license fee.

En. Sec. 3, Ch. 184, L. 1925.

2421.19. Bond required if deposit taken on orders for future delivery.

Every application made by an itinerant vendor taking orders for future delivery and collecting advance payments, deposits or guarantees thereon, under the terms of the preceding sections, shall be accompanied by a bond in the penal sum of \$250 to said county treasurer, executed by a surety company licensed to do business in this state, or by two responsible freeholders residing in the county and whose names appear upon the assessment-roll of said county (or in lieu thereof a cash bond of equal amount) and to be approved by said county treasurer, conditioned upon making of final delivery of the goods ordered or the services to be rendered, in accordance with the terms of such order, or failing therein, that the moneys advanced by his customers be refunded. Any person aggrieved by the action or misrepresentation of any such itinerant vendor shall have a right of action on the bond for the recovery of his money advanced or damages and costs. Such bond shall remain in full force and effect for a period of six months after the expiration of any such license, and shall be held to assure only business transacted under the authority of the license issued pursuant to the application which such bond accompanied.

En. Sec. 4, Ch. 184, L. 1925.

2421.20. Issuance of license indorsement and filing of application.

Upon filing of the application prescribed in section 3, or the filing of such application and the bond prescribed in section 4, in proper form, and upon the payment to the county treasurer of the sum required by section 2 of this act, the county treasurer shall issue and deliver to the applicant a license to carry on the business described in such application in the county in which such license is so issued, for a period of ninety days from the date of such license. Such license shall be non-transferable and shall have printed across the face thereof in bold type, the words "Not Transferable."

The county treasurer shall indorse upon each application the date of issuance of the license and shall immediately file such application with the county clerk and recorder of his county, who shall file the same in his office and keep an appropriate index thereof, which shall show the date filed, the name of the applicant and an appropriate reference to the file number by which said application may be found.

En. Sec. 5, Ch. 184, L. 1925.

2421.21. Penalty for failure to exhibit license. Every such itinerant vendor doing business under the provisions of this act must upon demand of any person exhibit his license and permit the same to then and there be read by the person making such demand; and any such itinerant vendor who shall wilfully refuse or fail to exhibit his license as above

provided is guilty of a misdemeanor and shall be fined not less than \$10 nor more than \$25 for each offense.

En. Sec. 6, Ch. 184, L. 1925.

2421.22. Penalty for doing business without license. Every itinerant vendor as herein defined, doing business without first obtaining a license as required by this act is guilty of a misdemeanor, and shall be punished accordingly as provided in the Penal Code.

En. Sec. 7, Ch. 184, L. 1925.

2421.23. Interpretation of provisions of law. Nothing in this act contained, is intended to operate so as to interfere with the power of the United States to regulate commerce between the states as such power is defined by the supreme court of the United States. Nothing in this act contained is intended to operate so as to impair or abridge, or interfere with, the right of any incorporated municipality within this state, to enact local laws or ordinances dealing with the subject of this act provided that such municipality shall not impose any license fees in excess of twice the amount provided herein for county license fees.

En. Sec. 8, Ch. 184, L. 1925.

2422-2428, inclusive. Relating to licensing itinerant vendors.

Rep. Sec. 9, Ch. 184, L. 1925.

CHAPTER 191.

MISCELLANEOUS LICENSES.

2441. Architects, builders, contractors, manufacturers.

A company conducting a bakery is a "manufacturer" within the meaning of this section, providing for the payment of a license of ten dollars per quarter by every "manufacturer doing a business of more than \$15,000 per quarter"; a manufacturer being one who produces articles for use from either raw or manufactured materials by giving to them new forms, qualities, properties or combinations. State v. Hennessy Co., 71 Mont. 301, 230 Pac. 64.

The tax imposed by this section upon

a manufacturer is the license or occupation tax provided for by the last sentence of section 1, article XII, of the constitution, and is not controlled by the uniformity clause contained in section 11 of the same article; hence such license tax may be graduated according to the amount of business done and is not open to attack as being discriminatory because one doing a business of \$15,000 or less a year is relieved from payment thereof. State v. Hennessy Co., 71 Mont. 301, 230 Pac. 64.

CHAPTER 192.

STATE, LOCAL AND COUNTY BOARDS OF HEALTH.

2459. Secretary authorized to act for state board in emergency cases.

Cited in Pue v. County of Lewis and Clark, 75 Mont. 207, 211, 243 Pac. 573.

2460.1. Authority state agencies to administer federal Indian appropriations. If and whenever the congress of the United States shall authorize the administration of federal appropriations for the welfare of the Indians of Montana through the agency of public departments and bureaus of this state, full power and authority is conferred upon such state agencies to administer the expenditure of such federal appro-

priations for the welfare of such Indians within the scope of the powers conferred upon such departments by law.

En. Sec. 1, Ch. 65, L. 1927.

2460.2. Authority state boards to administer. In furtherance of this authorization, the state board of health is hereby authorized, empowered and directed to administer the expenditure of all such federal appropriations as may be made for the care and hospitalization of and for medical attention to sick or injured Indians, and for the control and prevention of communicable and infectious diseases, and general sanitation among the Indians of Montana. The state board of education is authorized, empowered and directed to administer the expenditure of such federal appropriations as may be made for the construction and maintenance of schools and the education of the Montana Indians. The state bureau of child and animal protection is authorized, empowered and directed to administer the expenditure of such federal appropriations as may be made for the relief of aged, infirm, and indigent Indians throughout the state of Montana. Subject to such limitations as the congress of the United States or the secretary of the interior may lawfully impose upon the administration of such funds, the several state departments above mentioned are authorized to expend the same for the purposes within their respective jurisdictions which in the opinion of the respective heads of said departments will best conserve the interests and welfare of all the Indians residing within the state of Montana.

En. Sec. 2, Ch. 65, L. 1927.

2460.3. Budgets. If the congress of the United States shall require the submission of budgets to the secretary of the interior or any other federal agency before authorizing the expenditure of federal funds, such state agencies are hereby authorized to prepare budgets showing the amounts necessary during each year to carry out the purposes for which such federal appropriations may be made, and shall submit such budgets when prepared to the state board of control who shall co-ordinate the same so far as possible and approve them before they are forwarded to the federal agency charged with receiving them by congress. Thereafter said state agencies shall account directly to the federal disbursing and auditing officers and employees of each of said departments shall be responsible upon their official bonds to such federal disbursing and auditing officers for a proper accounting for all funds so disbursed.

En. Sec. 3, Ch. 65, L. 1927.

2464. Local boards of health.

Cited in *Griffith v. City of Butte et al.*, 72 Mont. 552, 562, 234 Pac. 829.

2467. Duties of local health officer.

The county health officer has no power to take steps for the abatement of nuisances or the removal of sources of filth, and incur expense in connection therewith, without first having received authorization from the county board of health. *Pue v. County of Lewis and Clark*, 75 Mont. 207, 243 Pac. 573.

2468. Penalties for failure to comply with orders of board.

Cited in *Pue v. County of Lewis and Clark*, 75 Mont. 207, 210, 243 Pac. 573.

2469. Powers of local board of health.

Cited in Griffith v. City of Butte et al., 72 Mont. 552, 562, 234 Pac. 829.

2470. Expenses of local and county boards.

Cited in Pue v. County of Lewis and Clark, 75 Mont. 207, 210, 243 Pac. 573.

2473. County boards of health.

The sections of the codes making provision for the appointment of a county health officer do not provide for a deputy health officer. Pue v. County of Lewis and Clark, 75 Mont. 207, 243 Pac. 573.

2475. Duties of county boards of health.

Cited in Pue v. County of Lewis and Clark, 75 Mont. 207, 210, 243 Pac. 573.

CHAPTER 197.**STATE BOARD OF ENTOMOLOGY—RODENT CONTROL.**

2561.1. Rodent control by board of county commissioners. The board of county commissioners of any county of this state, when there are within the limits of such county any lawfully established control districts of the state board of entomology for the control of Rocky mountain spotted fever are hereby authorized and empowered, upon the request of said state board of entomology or its duly authorized representative in such county, to appoint any suitable person or persons, whose duty it shall be to shoot, poison, trap or to otherwise catch or kill rodents within the limits of such control districts, and any person so appointed is hereby empowered and directed to enter upon any farm, railroad right of way, grounds or premises infested with rodents and located within the limits of such control districts, and to shoot, poison, trap or to otherwise catch or kill such rodents. It is further provided that any person so appointed shall work under the direction of the state board of entomology or its duly authorized representative in any county concerned.

En. Sec. 1, Ch. 24, L. 1923.

2561.2. Spotted fever control fund—Creation and use. The board of county commissioners in any county in which there are any such control districts may create a "Rocky mountain spotted fever control fund," either by appropriating money from the general fund of the county or at any time fixed by law for the levy and assessment of taxes, levy a tax not exceeding one-half mill on the dollar of assessed valuation, upon all property in the county, the proceeds of which shall be used solely for the purpose of providing for the shooting, poisoning, trapping or otherwise catching or killing of rodents in said county. The fund to be provided, to be raised in accordance with this section, shall be denominated the "Rocky mountain spotted fever control fund," and shall be kept separate and distinct by the county treasurer, and shall be expended by the board of county commissioners, and at such times and at any place in the county, and in such manner as is desired by the state board of entomology to secure the abatement or extermina-

tion of rodents which are hosts of any tick transmitting Rocky mountain spotted fever.

En. Sec. 2, Ch. 24, L. 1923.

2561.3. Report and pay of appointee. Any person appointed by the board of county commissioners under the provisions of this act shall at the end of each month, make a sworn statement to the county of the time expended in shooting, poisoning, trapping or otherwise catching and killing rodents, exclusive of time going to and returning from work, and such person shall be paid at the rate not to exceed three dollars and fifty cents (\$3.50) per day of eight hours.

En. Sec. 3, Ch. 24, L. 1923.

2561.4. Purchase of material. The board of county commissioners of any county may, from time to time, purchase such quantities and amounts of poisons, traps or other materials as may be necessary to carry out the provisions of this act to shoot, poison, trap or otherwise catch or kill rodents in any Rocky mountain spotted fever control districts of the state board of entomology within the limits of the county concerned.

En. Sec. 4, Ch. 24, L. 1923.

2561.5. Rodents—Defined. The term "rodents" as used within the limits of this act shall include such rodent or rodents as are known to be hosts of any tick which transmit Rocky mountain spotted fever and are required to be exterminated by those regulations of the state board of entomology which are in force in any county concerned in the year during which the appropriation shall be made.

En. Sec. 5, Ch. 24, L. 1923.

2561.6. Act supplemental. All acts or parts of acts in conflict herewith are hereby repealed; provided, however, that except as herein otherwise specified this act shall be construed as supplemental to and a part of all laws of this state relating to the control of Rocky mountain spotted fever.

En. Sec. 6, Ch. 24, L. 1923.

CHAPTER 198.

CONTROL OF VENEREAL DISEASES.

2564. Venereal diseases dangerous to public health.

Evidence showing that a woman had been plying her trade as a prostitute within a short time prior to her arrest by the county health officer under sections 2564-2577 and detention in quarantine on the ground that she was affected with

gonorrhea, was a constant associate of prostitutes, etc., held sufficient to warrant her detention until such time as it was safe to allow her to go at large. In re Caselli, 62 Mont. 201, 204 Pac. 364.

CHAPTER 199.

PURE FOOD AND DRUG ACT.

2589. License for manufacturers and purveyors of food and drinks.

Offered evidence to show that plaintiff did not have the license required by this section, authorizing him to conduct his restaurant business, at the time he was evicted by his landlord before expiration of the lease, was immaterial, since that fact alone would not tend to prove that

he could not have procured one upon placing the premises in a sanitary condition. *Quong et al. v. McEvoy et al.*, 70 Mont. 99, 224 Pac. 266.

Cited in *State v. Hennessy Co.*, 71 Mont. 301, 307, 230 Pac. 64.

CHAPTER 202.

REGULATION OF PRODUCTION AND SALE OF DAIRY PRODUCTS.

2622. Imitation butter—Regulation of sale and use of oleomargarine.

Hereafter the word "butter" shall not be printed or used, either alone or in conjunction with any other word or words upon any carton, package, or other receptacle containing any substitute for butter, such as margarine or any other substance not made entirely from milk fat. No person or persons shall manufacture or sell, or expose for sale, any substance out of vegetable or animal fats or oils (not from milk or cream) colored in imitation of butter or any shade of yellow.

All products made and sold, or exposed for sale as butter substitutes, and made either wholly or partly from any fat or oil other than from pure unadulterated milk or cream, shall have plainly marked, stamped or labeled on every package, so made, sold, or exposed for sale, in plain black, bold faced letters, one-half inch high, the word "oleomargarine." Hotels or restaurants using imitation butter or renovated butter, shall place placards, plainly legible from all parts of the dining-room marked "oleomargarine" or "renovated butter" as the case may be, "used here."

All oleomargarines or other substitutes for butter, and all renovated or process or patent butter, made or sold or offered for sale, shall have the name of the manufacturer plainly stamped or printed in a conspicuous place on the outside of the carton or package in which it is contained.

Amd. Sec. 1, Ch. 35, L. 1923.

2622.1. Regulation advertisements substitutes for dairy products.

That it shall be unlawful for any person, firm, or corporation, within the state of Montana, to use in connection or association with the sale, advertisement, or exposure for sale, of oleomargarine or any other substance intended to be used as a substitute for butter, made wholly or in part from animal or vegetable fats other than the fat of pure milk or cream, the words, "dairy," "creamery," "butter," "cream," or any picture of a cow or cows, or the name of any of the breeds of cattle.

En. Sec. 1, Ch. 187, L. 1925.

2622.2. Penalty. Any person, firm, or corporation, or any agent of either, violating any of the provisions of this act, shall be deemed guilty of a misdemeanor and be punished by a fine of not less than \$50 (fifty dollars), nor more than \$500 (five hundred dollars), or by imprisonment

for not less than thirty days nor more than six months, or by both such fine and imprisonment.

En. Sec. 2, Ch. 187, L. 1925.

2622.3. License of dealers in oleomargarine and other dairy substitutes. That it shall be unlawful for any person, firm or corporation, by himself, his or its servant or agent, to sell, exchange, offer for sale or have in possession with intent to sell or offer for sale or exchange, any oleomargarine, imitation or filled cheese, or any substitute for any dairy product made from milk or cream, without first securing a license from the state department of agriculture, labor and industry, to conduct such sale or exchange. The fee for such license shall be \$250 (two hundred fifty dollars) for a license to sell at wholesale and \$75 (seventy-five dollars) for a license to sell at retail. Said amount or amounts shall be paid at the beginning of each quarter of the calendar year, or at the time when application for license is made, and a license shall be issued to cover the following quarterly period or such part of it as remains at the time such license is issued. Such license shall be posted in a conspicuous place in each store or place of business for the inspection of the public and may be revoked by the commissioner of agriculture, labor and industry for failure of the holder thereof to comply with the laws of the state of Montana. Whenever any person, firm or corporation, by himself, his or its servant or agent or as the agent or servant of another, conducts such sale or exchange in more than one place of business, a separate license shall be obtained for each place of business and a separate fee shall be paid for each such license.

Any person, firm or corporation violating any of the provisions of this act shall be deemed guilty of a misdemeanor and punished by a fine of not less than \$100 (one hundred dollars) and no more than \$500 (five hundred dollars), or by imprisonment for not less than thirty days nor more than six months, or by both such fine and imprisonment.

En. Sec. 1, Ch. 188, L. 1925; Amd. Sec. 1, Ch. 10, L. 1927.

2623A. Adulteration certain dairy products forbidden. It shall be unlawful for any person, firm or corporation, by himself, his servant or agent, or as the servant or agent of another, to manufacture, sell or exchange, or have in possession with intent to sell or exchange, any milk, cream, skim milk, buttermilk, condensed or evaporated milk, powdered milk, condensed skim milk, or any of the fluid derivatives of any of them to which has been added any fat or oil other than milk fat, either under the name of said products or articles or the derivatives thereof or under any fictitious or trade name whatsoever. Nothing in this section shall be construed to prohibit the shipment into this state from a foreign state and the first sale thereof in this state in the original package intact and unbroken, of any of the products or articles, the manufacture, sale or exchange of which or possession of which, with intent to sell or exchange is prohibited hereby.

En. Sec. 1, Ch. 51, L. 1923.

2627. Prohibition of coloring matter. No person shall coat, powder, or color with annato or any coloring whatsoever, butterine, or oleomar-

garine, or any compound of the same, or any product or manufacture made in whole or in part from animal fats or animal and vegetable oils not produced from unadulterated milk or cream by which means such product, manufacture, or compound shall resemble butter or cheese, the product of the dairy; nor shall he have the same in his possession with the intent to sell, nor shall he sell or offer the same for sale.

No person or persons shall manufacture, sell or expose for sale any poisonous coloring matter for coloring of dairy food products of any kind, nor shall any person or persons use in dairy products any poisonous coloring matter manufactured, sold, offered, or exposed for sale, within the state, nor shall any person or persons sell, offer, or expose for sale any dairy food product containing such poisonous coloring matter.

Amd. Sec. 2, Ch. 35, L. 1923.

2628. Sale of skimmed milk. Milk from which cream has been removed, if such is otherwise wholesome and unadulterated, may be sold as such to makers of skim cheese, or to a consumer as hereinafter defined; but in the latter case only from vessels legibly marked with the words "skimmed milk" in plain black letters upon a light colored background, and each letter being at least one inch high and one-half inch wide, and said words being placed on the top or side of each vessel. These requirements, however, shall not apply to skimmed or separated milk, delivered to any patron of the creamery who regularly sells whole milk to the proprietor thereof; but all the skimmed milk so delivered shall first be pasteurized at a temperature of at least one hundred and eighty degrees Fahrenheit.

Amd. Sec. 3, Ch. 35, L. 1923.

2629. Trademarks. When any dealer in dairy products wishes to retain for himself a name, brand or trademark, the same may be registered with the state department of agriculture, labor and industry and on no account shall that name, brand or trademark be used by another, unless duly consigned, given or sold to him by the originator or by the one to whom it belongs.

Amd. Sec. 4, Ch. 35, L. 1923.

2630. Unfair discrimination. Any person, firm, copartnership or corporation engaged in the business of buying milk, cream or butter fat for the purpose of manufacture or sale, who shall discriminate between different sections, localities, communities, or cities of this state, by purchasing such commodity at a higher price or rate in one locality than is paid for the same commodity by said person, firm, copartnership, or corporation in another locality, after making due allowance for the difference, if any, in the quality of such commodity or commodities, and the actual cost of transportation from the locality of purchase to the locality of manufacture, shall be deemed guilty of unfair discrimination and upon conviction thereof shall be punished by a fine of not less than two hundred dollars nor more than ten thousand dollars, or by imprisonment for not less than thirty days, nor more than twelve months in the county jail, or by both such fine and imprisonment for each offense.

Amd. Sec. 5, Ch. 35, L. 1923.

2631. Penalty for violation of law. Except where otherwise provided, any person or persons violating any section of this act shall be deemed guilty of a misdemeanor and shall be punished by a fine of not less than twenty-five dollars, nor more than two hundred and fifty dollars for each offense, or by imprisonment in the county jail for not less than ten days nor more than thirty days, or by both such fine and imprisonment.

Amd. Sec. 6, Ch. 35, L. 1923.

CHAPTER 203.

PROTECTION OF PUBLIC WATER SUPPLY.

2645. Disposal of fees. The fees collected by the state board of health under this act shall be turned over to the state treasurer who shall place them in the general fund of the state of Montana.

Amd. Sec. 1, Ch. 34, L. 1925.

2645.1. Transfer funds. All moneys now in the state board of health maintenance fund, not heretofore specifically appropriated, for any other purpose, shall be turned over by the state treasurer to the general fund of the state of Montana.

En. Sec. 2, Ch. 34, L. 1925.

CHAPTER 204.

CONSTRUCTION AND EXAMINATION OF DAMS AND RESERVOIRS.

2658. Dams and reservoirs—How constructed.

Under sections 2658-2671, reservoirs may be constructed for the purpose of storing flood waters, in the course or at the headwaters of an adjudicated stream, provided their construction does

not interfere with the use by prior appropriators of the natural flow in the stream to the extent of their appropriations. *Donich et al. v. Johnson et al.*, 77 Mont. 229, 250 Pac. 963.

CHAPTER 207.

INSPECTION OF BOILERS—ENGINEERS' LICENSE.

2726. Certain boilers exempted—Inspection. Boilers used for heating purposes in private residences, low-pressure cast iron sectional boilers carrying not to exceed fifteen pounds steam pressure, and locomotives used on railroads conducting a general business in hauling passengers and freight do not come under the provisions of this article. But locomotives, commonly known as dinky engines, used in operating logging or mining railroads, or any similar work where such locomotives are owned, leased or operated by any individual, company, or corporation and are used in the business of such individual, company, or corporation, and not for general commercial purposes, shall be classed as traction engines and be subject to inspection as are other traction engines, and the persons operating or firing such dinky locomotives shall be required to hold traction licenses. Nor are locomotive engineers, save as herein provided, or persons operating any of the engines or boilers herein, exempted from the operation of this article, required to procure license

from the inspectors. It shall be the duty of the owner and user of any traction engine or boiler on wheels to notify the inspector of the location of such boiler on or before the first day of June of each year. Any owner or user of such traction engine or boiler on wheels who shall fail to notify the inspector as herein provided shall be deemed guilty of a misdemeanor. Any person purchasing any steam boiler, whether traction or stationary boiler, shall be entitled to receive from the seller the certificates of inspection issued on such boiler and any person purchasing any steam boiler, whether traction or stationary, not exempted by the provisions of this section, shall, within ten days after such purchase, report the fact of such purchase to the boiler inspector and notify such inspector where he intends to locate or operate said boiler. Any person failing to comply with the provisions of this section shall be deemed guilty of a misdemeanor. All other steam boilers and steam engines, save as herein exempted, come under the provisions of this article and persons operating same are required to hold the proper grade of license.

Amd. Sec. 1, Ch. 140, L. 1923.

CHAPTER 210.

FOREST FIRE PROTECTION—LISTING STATE LAND WITH AGENCIES.

2765. Permits for burning forest material.

Rep. Sec. 8, Ch. 95, L. 1927.

2771 to 2773 inclusive. Relating to the burning of brush, slashings, etc.

Rep. Sec. 8, Ch. 95, L. 1927.

2778.1. Listing of state lands with agencies. The state board of land commissioners may, in its discretion, list any of the state's forest lands with any qualified agency engaged in patrolling, preventing, and suppressing forest fires. The state shall bear and pay its proper share of the cost of protection from fire of the lands so listed. Such moneys as the state shall become liable for under the provisions of this section shall be paid from any funds provided by law for the protection of state forests and forest lands.

En. Sec. 1, Ch. 95, L. 1927.

2778.2. Uncontrolled fires nuisances—Liability—Abatement. Any uncontrolled or spreading fire in forest material in the state of Montana, from May 1 to September 30, inclusive, is hereby declared a public nuisance. The person, firm, or corporation on whose property such fire exists or from whose property such fire spreads, is hereby made responsible, to the extent hereinafter set forth for its control and extinguishment. If the person, firm or corporation thus responsible, shall refuse, or neglect, or fail to take reasonable steps to control or extinguish it, the state forester, the United States or any organized and functioning forest protective association recognized by the state forester, may summarily abate such nuisance by controlling or extinguishing the fire, and the cost thereof may be recovered from such person, firm or corporation

responsible for such fire by the state of Montana, or the United States, or the association, which extinguished or controlled it. If the person, firm or corporation shall fail to pay in full the total amount due within thirty (30) days after date of written demand for payment, such amount may be collected in an action for debt by the state, the United States, or the association which abated the nuisance.

Provided, that when any person, firm or corporation has listed his lands with any such regularly organized and functioning forest protective association recognized by the state forester, or with the state forester or the United States forest service, it shall be considered that he has taken reasonable steps to control and extinguish fires as described in this section except such fires as may be the result of his negligent acts, conduct or operations.

En. Sec. 2, Ch. 95, L. 1927.

2778.3. Definition of terms. For the purpose of this act, "forest land" shall mean any land which has thereon slashings, brush, inflammable forest growth of any kind, or size, living or dead, or standing or down, including debris, or forest cover of any kinds.

"Forest material" shall be held to mean trees, poles, logs, pilings, slabs, ties, stumps, cordwood, bark sticks, slashings, wood, brush, cuttings, refuse, weeds, grass, twigs, leaves, and litter within or adjacent to standing timber, cut-over land, or burned-over forest land, and every kind of forest products lying or piled upon the land.

En. Sec. 3, Ch. 95, L. 1927.

2778.4. Burning permits—Granting and suspension. To insure the protection of lives and property, no person shall burn any forest material of the kind defined by this act within the state of Montana during the period from May 1 to September 30, inclusive, of each year, which period is hereby designated as the closed season, without first obtaining written permission to burn, from the state forester or his authorized representative, a fire warden, or a ranger. Said permit shall fix the time for setting out fires and the particular period within which a fire may be set out and allowed to continue burning, and no fire shall be set without reasonable precaution having been taken and without having equipment and tools present at time of setting the fire to control the same, and the said fire shall be watched by the person setting the fire until it is out. Anyone violating any provisions of this section shall, upon conviction thereof, be fined not less than twenty-five dollars (\$25) nor more than five hundred dollars (\$500), or be imprisoned in the county jail not less than ten (10) nor more than ninety (90) days, or by both such fine and imprisonment.

The state forester, any of his assistants, any fire warden or ranger, may during the closed season, refuse to grant permits, or may revoke any permit, or may require any permittee to postpone the burning authorized by permit when in his judgment such action is necessary.

In times and localities of unusual forest fire hazard, the governor, upon the advice of the state forester, may suspend any or all permits authorized by this section.

En. Sec. 4, Ch. 95, L. 1927.

2778.5. Cutting right of way—Piling brush. Everyone clearing right of way for any railroad, public highway, public trail, private highway, private road, trail, ditch, dike, pipe line or wire line, or any other transmission or transportation utility right of way, except temporary roads, chutes or trails used in actual logging operations, shall pile and burn all refuse timber, brush, slash or debris cut for such clearing or resulting from the cutting of material for the construction of said public or private utility unless exempted by the state forester.

The piling shall be done as rapidly as cutting or clearing progresses, and burning shall be completed within one (1) year from time of cutting. If burning be done during the closed season it must be done in compliance with all the provisions of this act relative to burning permits during the closed season.

The provisions of this section shall apply to all clearing of rights of way on behalf of the state, county, highway districts and road districts, whether the work be done by day labor, or by contract, and less [unless] unavoidable emergency prevents, provisions shall be made by the proper officials conducting, directing, or letting said work for withholding until it is complete, a sufficient portion of the payment therefor to assure compliance with this act.

Violations of any of the provisions of this section shall be deemed a misdemeanor and be punishable by a fine of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000).

In addition to the penalty herein provided, the offender may be enjoined, at the instance of the state forester, or of the fire warden of the district, from proceeding with such work until the provisions of this section shall have been complied with; and, upon application of the state forester, or of the fire warden of the district, to any court of competent jurisdiction, a writ of mandate shall issue compelling the offender to fully comply with the provisions hereof.

En. Sec. 5, Ch. 95, L. 1927.

2778.6. Duty of those cutting timber to remove fire hazards. Every person, firm or corporation who shall hereafter cut any timber, logs, ties, posts, poles, cordwood, or pulpwood or any other forest product upon lands within the state of Montana shall remove any fire hazard to the property of others created by the slashings, incident to such cutting, by partial or complete disposal of said slashings, or by other procedure, to the extent and in the manner required by the state forester under the conditions obtaining, provided that expenditures in excess of fifteen (15) cents per thousand (1,000) feet board measure, or the equivalent thereof, of any merchantable timber cut shall not be required.

The state forester and fire wardens acting under his authority shall enforce the provisions of this section and the requirements of the state forester made thereunder.

En. Sec. 6, Ch. 95, L. 1927.

2778.7. Removal of slash hazards required—Slashings lien. If any person, firm or corporation shall fail, refuse or neglect to remove slash hazards hereafter created in accordance with the requirements of the state forester for a period of thirty (30) days after the date of a written

order to remove such slash hazards forwarded by registered mail to the person, firm or corporation required by this act to remove said slash hazards, by the state forester or his authorized representative, the state forester may procure the removal of the slashings, or such part thereof as he shall deem necessary and he shall immediately afterwards notify the person, firm or corporation that had failed to remove the slash hazards of the cost of their removal and demand payment of the cost thereof, which shall not be in excess of fifteen (15) cents per thousand (1,000) feet board measure, or equivalent thereof, of any merchantable timber cut plus ten (10) per cent to cover additional costs incurred by the state. If payment of the sum demanded be not made to the state forester within thirty (30) days after the date of such demand, the state forester must transfer all papers relative to the unsatisfied demand for payment to the attorney general of the state, who shall bring legal action on behalf of the state to recover the debt. If the amount expended by the state forester for the removal of the slashings be not paid within the time herein required, a lien as security for the amount of the debt shall attach to the land on which the slashings were created and or the timber or other forest products cut or produced from such land from and after the date that notice of such lien shall be filed by the state forester in the office of the clerk and recorder of each county in which said land is situated.

The lien shall be known and recorded as a "slashings lien."

Upon the filing of such notice in the office of the clerk and recorder of the proper county it shall immediately and thereafter constitute a lien upon said land and or timber or other forest products until it shall have been released or satisfied.

En. Sec. 7, Ch. 95, L. 1927.

2778.8. Effect partial invalidity act. If any section, subdivision, sentence, or clause of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this act.

En. Sec. 9, Ch. 95, L. 1927.

CHAPTER 213.

WORKMEN'S COMPENSATION ACT—INDUSTRIAL ACCIDENT BOARD.

2816. Name of act—What each part to contain.

The operation of an electric passenger elevator is not a hazardous employment within the provisions of the Workmen's Compensation Act. Page v. New York Realty Co., 59 Mont. 305, 196 Pac. 871.

The question as to what persons or accidents come within the provisions of the Workmen's Compensation Act is one of law rather than one of fact. Page

v. New York Realty Co., 59 Mont. 305, 196 Pac. 871.

This and following sections of the Workmen's Compensation Act were cited as chapter 96, L. 1915, in State ex rel. Lockwood v. Tyler, 64 Mont. 124, 139, 208 Pac. 1081.

For text treatment of this subject see vol. 27 Cal. Jur. 250.

2836. Defenses excluded in personal injury action.

The Workmen's Compensation Act, in so far as it provides compensation to an injured employee for injuries received from an accident growing out of and in

the course of his employment, is exclusive of all other remedies. *Wirta v. North Butte Mining Co. et al.*, 64 Mont. 279, 30 A. L. R. 964, 210 Pac. 332.

Cited in *Miller v. Granite County Power Co. et al.*, 66 Mont. 368, 372, 213 Pac. 604.

Cited in *Bruce v. McAdoo*, 65 Mont. 275, 288, 211 Pac. 772.

This and the two following sections were cited as sections 3 a, b and c, chapter 96, L. 1915, in *Page v. New York Realty Co.*, 59 Mont. 305, 312, 196 Pac. 871.

2837. Defenses not excluded in personal injury action against employer in nonhazardous occupation and certain other occupations. The provisions of section 2836 shall not apply to actions to recover damages for personal injuries sustained by household and domestic servants or those employed in farming, dairying, agricultural, viticultural, and horticultural, stock or poultry raising, or engaged in the operation and maintenance of steam railroads conducting interstate commerce, or persons whose employment is of a casual nature.

Amd. Sec. 1, Ch. 121, L. 1925.

An employer who elects not to come under the provisions of the Workmen's Compensation Act may, under this section invoke the common-law defenses of contributory negligence, negligence of a fellow-servant and assumption of risk in an action for personal injuries sustained

by an employee, if the injuries were sustained while the latter was engaged in an employment of a casual nature, even though such employment was hazardous within the meaning of the act. *Miller v. Granite County Power Co. et al.*, 66 Mont. 368, 213 Pac. 604.

2838. Employers not liable for death or injury other than herein defined—Employees who elect not to come under law.

To create liability under the Workmen's Compensation Act, there must have been an accident causing injury to the employee which arose out of his employment and in the course thereof. *Wirta v. North Butte Mining Co. et al.*, 64 Mont. 279, 30 A. L. R. 964, 210 Pac. 332.

The test to be applied in determining whether plaintiff employee and defendant mining company were subject to the Workmen's Compensation Act is whether plaintiff could enforce liability against defendant under the act for the injuries sustained by him. If so, he as well as

the company were bound by its provisions. *Wirta v. North Butte Mining Co. et al.*, 64 Mont. 279, 30 A. L. R. 964, 210 Pac. 332.

Sections 2838, 2839 were cited in *Miller v. Granite County Power Co. et al.*, 66 Mont. 368, 373, 213 Pac. 604; *Bruce v. McAdoo*, 65 Mont. 275, 288, 211 Pac. 772.

This and section 2839 were cited in *Wirta v. North Butte Mining Co. et al.*, 64 Mont. 279, 287, 30 A. L. R. 964, 210 Pac. 332.

2839. Employers not liable for death or injury other than herein defined—Employees who elect not to come under act.

Where a coal mining company and its employees had elected to operate under plan 3 of the Workmen's Compensation Act, and plaintiff employee received injuries in the course of his employment at the company's plant because of a defective brake on a car furnished his employer by defendant railroad company, the remedy afforded him by the provisions of the Compensation Act was exclusive, depriving him of the right to maintain action for damages against the railroad company for its negligent failure to have the car equipped with a reasonably safe

appliance. *Black v. Northern Pacific Ry. Co.*, 66 Mont. 538, 214 Pac. 82.

The provisions of the Compensation Act with relation to compensation are exclusive of any other remedy, except where the injury was caused by the negligence of a third person away from the plant of the employer, in which case alone the employee or his beneficiaries in case of death are given the right of election whether to take under the act or seek damages from such third person. *Bruce v. McAdoo*, 65 Mont. 275, 211 Pac. 772.

2841. Employers engaged in hazardous industries—Election.

This and the following section were cited as sections 3 f and g, chapter 96,

L. 1915, in *Page v. New York Realty Co.*, 59 Mont. 305, 313, 196 Pac. 871.

2847. Act applies to all inherently hazardous occupations as enumerated.

Cited in *Miller v. Granite County Power Co. et al.*, 66 Mont. 368, 373, 213 Pac. 604; *Bruce v. McAdoo*, 65 Mont. 275, 289, 211 Pac. 772.

This and the four following sections

were cited as sections 4 a, b, c, d, e, chapter 96, L. 1915, in *Page v. New York Realty Co.*, 59 Mont. 305, 313, 196 Pac. 871.

2849. Operation (including repair work) of logging, cable, electric, street, steam or other railroads; dredges; interurban electric railroads using third rail systems; electric light and power plants; quarries; telegraph systems; stone crushers; blast furnaces; smelters; coal mines; gas works; steamboats; tugs and ferries; mines other than coal; steam-heating or power plants; grain elevators; freight elevators and passenger elevators; laundries; waterworks; paper-mills; pulp-mills; garbage and fertilizer works.

Amd. Sec. 1, Ch. 117, L. 1925.

2849. Operation.

Cited in *Bruce v. McAdoo*, 65 Mont. 275, 289, 211 Pac. 772.

2851. Miscellaneous work.

Cited as section 4 e, chapter 96, L. 1915, in *Page v. New York Realty Co.*, 59 Mont. 305, 314, 196 Pac. 871.

2852. Hazardous occupations not enumerated or hereafter arising.

Under the rule of statutory construction that where general words follow an enumeration of particular subjects, they must be held to include only such objects or things as are of the same general character of those specifically mentioned, the provision of this section making it applicable to any hazardous

occupations, other than those enumerated, which might thereafter arise, held to apply only to such employments or industries as are of the same nature as those specifically mentioned in the act. *Page v. New York Realty Co.*, 59 Mont. 305, 196 Pac. 871.

2856. Mill defined.

Cited as section 6 c, chapter 96, L. 1915, in *Page v. New York Realty Co.*, 59 Mont. 305, 314, 196 Pac. 871.

2862. Employer defined. "Employer" means the state and each county, city and county, city school district, irrigation district, all other districts established by law and all public corporations and quasi-public corporations and public agencies therein and every person, firm, voluntary associations and private corporation, including any public service corporation and including an independent contractor, who has any person in service, in hazardous employment, under any appointment or contract of hire, expressed or implied, oral or written, and the legal representative of any deceased employer or the receiver or trustee thereof.

Amd. Sec. 2, Ch. 121, L. 1925.

Director-general of Railroads as within state statute, notes, 11 A. L. R. 1454; 19 A. L. R. 697.

Charitable institutions as within Workmen's Compensation Act, note, 30 A. L. R. 600.

For text treatment of this subject see vol. 27 Cal. Jur. 330.

2863. "Employee" and "workman" defined. "Employee" and "workman" are used synonymously and mean every person in this state, including a contractor other than an "independent contractor" who is in the service of an employer as defined by the preceding section, under any appointment or contract of hire, expressed or implied, oral or written, including aliens and also including minors, whether lawfully or unlawfully employed, and all who are connected with or engaged in hazardous occupations of the elected and appointed paid public officers and officers and members of boards of directors of quasi-public or private corporations while rendering actual service for such corporations for pay but excluding any person whose employment is both casual and not in the courses of the trade, business, profession or occupation of his employer and also excluding any employee engaged in household, domestic service, farm, dairy, agricultural, viticultural or horticultural labor, in stock or poultry raising, except as hereinafter provided.

Amd. Sec. 3, Ch. 121, L. 1925.

Cited in *Black v. Northern Pacific Ry. Co.*, 66 Mont. 538, 547, 214 Pac. 82; *Bruce v. McAdoo*, 65 Mont. 275, 289, 211 Pac. 772.

Cited as section 6 j, chapter 96, L. 1915, in *Page v. New York Realty Co.*, 59 Mont. 305, 314, 196 Pac. 871.

Interest in business or corporation or firm owning business as affecting right to compensation, notes, 15 A. L. R. 1288; 25 A. L. R. 376.

Right of firemen and policemen to re-

cover under Workmen's Compensation Acts, note, 10 A. L. R. 201.

Person in military or naval service, note, 13 A. L. R. 1251.

Public officer as within Workmen's Compensation Act, note, 44 A. L. R. 1477.

Applicability of act to piece-workers, note, 38 A. L. R. 839.

What is casual employment, note, 33 A. L. R. 1452.

Applicability of act to employees engaged in farming, notes, 7 A. L. R. 1296; 13 A. L. R. 955.

For text treatment of this subject see vol. 27 Cal. Jur. 275.

2865. "Beneficiary" defined. "Beneficiary" means and shall include a surviving wife or husband and a surviving child or children under the age of eighteen years and an invalid child or invalid children over the age of eighteen years, or if no surviving wife or husband then a surviving child or children under the age of eighteen years and an invalid child or invalid children over the age of eighteen years; provided, however, that no invalid child over the age of eighteen years shall be considered a beneficiary unless dependent upon the decedent for support at the time of injury.

Amd. Sec. 4, Ch. 121, L. 1925.

"Dependency" within Workmen's Compensation Act, notes, 13 A. L. R. 686; 30 A. L. R. 1253; 35 A. L. R. 1066; 39 A. L. R. 313.

Dependency of wife, notes, 13 A. L. R. 708; 30 A. L. R. 1266; 35 A. L. R. 1075; 39 A. L. R. 319.

Dependency of child, notes, 13 A. L. R. 702; 30 A. L. R. 1263; 35 A. L. R. 1071; 39 A. L. R. 317.

Dependency of parent, notes, 13 A. L. R. 693; 30 A. L. R. 1258; 35 A. L. R. 1070; 39 A. L. R. 314.

For text treatment of this subject see vol. 27 Cal. Jur. 287.

2866. "Major dependent" defined. "Major dependent" means if there be no beneficiary as defined in the preceding section, the father and mother, or the survivor of them, if actually dependent upon the decedent at the time of his injury, then to the extent of such dependency, not to exceed, however, the maximum compensation provided for in this act.

Amd. Sec. 5, Ch. 121, L. 1925.

2867. "Minor dependent" defined. "Minor dependent" means if there be no beneficiary or major dependent as defined in the preceding sections the brothers and sisters under the age of eighteen years, provided, however, that no invalid brother or invalid sister over the age of eighteen years shall be a "minor dependent" unless actually dependent upon the decedent at the time of his injury. Minor dependents shall be awarded compensations to the extent of such dependency, not to exceed, however, the maximum compensation provided for in this act.

Amd. Sec. 6, Ch. 121, L. 1925.

2888. "Casual employment" defined.

Defendant's business was that of generating and disposing of electric power. A watchman at its plant employed a minor to dig a well to secure water for use at the watchman's dwelling-house. The minor was killed while doing so. The company had elected not to come under the Workmen's Compensation Act.

Held, that the employment of decedent was not in the usual course of business of the company but was casual and therefore the defenses of contributory negligence and assumption of risk were available to defendant. *Miller v. Granite County Power Co. et al.*, 66 Mont. 368, 213 Pac. 604.

2889. "Plant of the employer" includes what.

Where a railroad company delivered empty cars and transported loaded ones over a spur-track constructed to a point near a coal mine, and the portion of the track where the coal company placed loaded cars was indispensable to the conduct of its business, and one of the latter company's employees was injured while attempting to set a defective brake on

a loaded car which he was moving in the course of his employment, the injury occurred at the "plant" of his employer, within the Workmen's Compensation Act, entitling him to compensation under that act. *Black v. Northern Pacific Ry. Co.*, 66 Mont. 538, 214 Pac. 82.

Cited in *Bruce v. McAdoo*, 65 Mont. 275, 289, 211 Pac. 772.

2891. Compensation to children, brothers and sisters and invalid children—When ceases. In computing compensation to children and to brothers and sisters, only those under eighteen years of age, or invalid children over the age of eighteen years, shall be included, and in case of invalid children, only during the period in which they are under that disability, all within the maximum limitations elsewhere in this act provided, after which payment on account of such person or persons shall cease. Compensation to children, or brothers or sisters, except invalids, shall cease when such persons reach the age of eighteen years and in all cases shall cease when such person marries.

Amd. Sec. 7, Ch. 121, L. 1925.

2898. Compensation paid to parent or guardian. Where payment is due to a child under eighteen years of age or to a person adjudged incompetent, the same shall be made to the parent or to the duly appointed guardian, as the case may be, and the written receipt of such parent or guardian shall acquit the employer, the insurer or board, as the case may be, of further liability. In other cases, payment shall be made to the person entitled thereto or to his duly authorized representative.

Amd. Sec. 8, Ch. 121, L. 1925.

2900. Exception in case of minors and incompetents as to period of limitation. No limitation of time as provided in the preceding section

or in this act shall run as against any injured workman who is mentally incompetent and without a guardian or an injured minor under eighteen years of age who may be without a parent or guardian. A guardian in either case may be appointed by any court of competent jurisdiction, in which event the period of limitations as provided in the preceding section, shall begin to run on the date of appointment of such guardian or when such minor arrives at the age of eighteen years.

Amd. Sec. 9, Ch. 121, L. 1925.

2911. Who liable for injuries under the different plans of act, and in what amounts.

Cited in *Black v. Northern Pacific Ry. Co.*, 66 Mont. 538, 546, 214 Pac. 82.

2912. Compensation for injury producing temporary total disability. For an injury producing temporary total disability, fifty per centum of the weekly wages received at the time of the injury, subject to a maximum compensation of fifteen dollars per week and a minimum compensation of seven dollars per week. Such compensation shall be paid during the period of disability but for a period not exceeding three hundred weeks from date of injury.

Amd. Sec. 10, Ch. 121, L. 1925.

For text treatment of this subject see vol. 27 Cal. Jur. 510.

2913. Compensation for injury producing total disability permanent in character. Fifty per centum of the weekly wages received at the time of injury, subject to a maximum compensation of fifteen dollars per week and a minimum compensation of seven dollars per week. Such compensation shall be paid during the period of disability, not exceeding five hundred weeks from date of injury.

Amd. Sec. 11, Ch. 121, L. 1925.

For text treatment of this subject see vol. 27 Cal. Jur. 506.

Cited in *Novak v. Industrial Acc. Board*, 73 Mont. 196, 200, 235 Pac. 754.

2914. For partial disability.

Construing this section prior to amendment by chapter 121, L. 1925, held, in connection with other sections of the act, that the maximum compensation for a permanent partial disability caused by an injury to an arm from the elbow

down is \$12.50 per week for 180 weeks, the amount to be divided into payments extending over a period not exceeding 150 weeks. *Novak v. Industrial Acc. Board*, 73 Mont. 196, 235 Pac. 754.

2915. Compensation for injury causing death. Where the injury causes death, fifty per centum of the wages received at the time of the injury to his beneficiaries, if any, residing within the United States at the date of the happening of the injury or if residing outside of the United States, forty per centum of such compensation, or if none, then fifty per centum of the wages received at the time of the injury to his major dependents, if any, if residing in the United States, at the date of the happening of the injury, or if none, then thirty per centum of the wages received at the time of the injury to his minor dependents, if any, if residing within the United States at the date of happening of the injury, subject to a maximum compensation of fifteen dollars per week

and a minimum compensation of seven dollars per week for a period not exceeding four hundred weeks; provided that if at the time of the injury the employee received wages of less than eight dollars per week, the full amount of such wages per week, for a period not exceeding four hundred weeks, and, provided further that compensation payable to major or minor dependents shall not exceed the amount of dependency.

Amd. Sec. 12, Ch. 121, L. 1925.

Deductions allowable in computing earnings as basis of death benefits, note, 22 A. L. R. 864.

Anticipation of increase in wages of minor as element in fixing death benefit, note, 21 A. L. R. 1531.

2916. Providing for additional compensation in case death occurs while employee is drawing or entitled to draw compensation payment. There shall be paid in addition to other compensation, if death due to injury occurs while the employee is drawing or entitled to draw compensation payment, the reasonable burial expenses of the employee, not exceeding one hundred and fifty dollars.

Amd. Sec. 13, Ch. 121, L. 1925.

2917. Medical and hospital services to be furnished. During the first six months after the happening of the injury, the employer or insurer or the board, as the case may be, shall furnish reasonable medical, surgical and hospital service and medicines when needed, not exceeding in amount the sum of five hundred dollars, unless the employee shall refuse to allow them to be furnished, and unless such employ[ee] is under a hospital contract, as provided in section 2907 of this act.

Amd. Sec. 14, Ch. 121, L. 1925.

2919. Compensation to run consecutively—Major and minor dependents not residing in the United States—Manner of payment. Compensation, other than medical, surgical, hospital and burial benefits provided shall run consecutively and not concurrently and payment shall not be made for two classes of disability over the same period, provided that no compensation shall be paid to a major or minor dependent who did not reside within the United States at the date of the happening of the injury. Compensation due to beneficiaries shall be paid to the surviving spouse, if any, or if none, then divided equally among or for the benefit of the children. Compensation due to major dependent where there be more than one, shall be divided equitably among them and likewise as to minor dependents, and the question of dependency and amount thereof shall be a question of fact for determination by the board.

Amd. Sec. 15, Ch. 121, L. 1925.

2920. Compensation in cases of specified injuries. In case of the following specified injuries, the compensation in lieu of any other compensation provided by this act, other than that provided in section 2917, unless the employee is a contributor to a hospital fund as otherwise in this act provided, shall be fifty per cent of the wages received at the time of the injury, subject to a maximum compensation of fifteen dollars per week, and a minimum compensation of seven dollars per week; provided, that if, at the time of the injury the employee received wages

of less than seven dollars per week, then he shall receive the full amount of such wages per week, and shall be paid for the following periods:

For the loss of:

One arm, at or near shoulder.....	200 weeks
One arm, at the elbow.....	180 weeks
One arm, between wrist and elbow.....	160 weeks
One hand	150 weeks
One thumb and the metacarpal bone thereof.....	60 weeks
One thumb at the proximal joint.....	30 weeks
One thumb at the second distal joint.....	20 weeks
One first finger and the metacarpal bone thereof.....	30 weeks
One first finger at the proximal joint	20 weeks
One first finger at the second joint	15 weeks
One first finger at the distal joint	10 weeks
One second finger and the metacarpal bone thereof.....	30 weeks
One second finger at the proximal joint	15 weeks
One second finger at the second joint	10 weeks
One second finger at the distal joint	5 weeks
One third finger and the metacarpal bone thereof.....	20 weeks
One third finger at the proximal joint	12 weeks
One third finger at the second joint	8 weeks
One third finger at the distal joint	4 weeks
One fourth finger and the metacarpal bone thereof.....	12 weeks
One fourth finger at the proximal joint	9 weeks
One fourth finger at the second joint	6 weeks
One fourth finger at the distal joint	3 weeks
One leg at or near the hip joint as to preclude the use of an artificial limb	200 weeks
One leg at or above the knee where stump remains sufficient to permit the use of an artificial limb.....	150 weeks
One leg between the knee and ankle.....	140 weeks
One foot at the ankle	125 weeks
One great toe with the metatarsal bone thereof.....	30 weeks
One great toe at the proximal joint	15 weeks
One great toe at the second joint	10 weeks
One toe, other than the great toe with the metatarsal bone thereof	12 weeks
One toe other than the great toe, at the proximal joint.....	6 weeks
One toe other than the great toe at the second distal joint....	3 weeks
One eye, by enucleation	120 weeks
Total blindness of one eye	100 weeks
Total loss of hearing, one ear	20 weeks
Total loss of hearing, both ears.....	120 weeks

The loss of both hands, or both arms, or both feet or both legs, or both eyes, or any two thereof in the absence of conclusive proof to the contrary, shall constitute total disability permanent in character.

Amd. Sec. 16, Ch. 121, L. 1925.
Cited in Novak v. Industrial Acc.
Board, 73 Mont. 196, 200, 235 Pac. 754.

What amounts to loss of member, note,
18 A. L. R. 1350.
Loss or impairment of eyesight, notes,
8 A. L. R. 1324; 24 A. L. R. 1466,

2922. Paralysis of limbs considered loss thereof.

Cited in *Novak v. Industrial Acc. Board*, 73 Mont. 196, 201, 235 Pac. 754.

2960. How appeal taken—Notice—Record—Trial.

Cited in *Novak v. Industrial Acc. Board*, 73 Mont. 196, 199, 235 Pac. 754.

2964. Court to give liberal construction to act.

The legislative direction contained in this section, that courts called upon to interpret its provisions must construe it liberally, is not a warrant for inserting that which has been omitted. Page v. New York Realty Co., 59 Mont. 305, 196 Pac. 871.

Cited in *Novak v. Industrial Acc. Board*, 73 Mont. 196, 203, 235 Pac. 754; *Wirta v. North Butte Mining Co. et al.*, 64 Mont. 279, 291, 30 A. L. R. 964, 210 Pac. 332.

2970. When and how employer may elect to adopt—Direct payment to employee.

This and sections 2978 and 2990 were cited as sections 30a, 35a and 40a, chapter 96, L. 1915, in *Page v. New York*

Realty Co., 59 Mont. 305, 314, 196 Pac. 871.

2990A. Permitting employers in certain nonhazardous occupations to elect to comply and come under the provisions of plans 2 and 3 of this act. Classification of such employers and their employees. Any employer engaged in farming, dairying, agriculture, viticulture, horticulture, stock or poultry raising, may elect to comply with the provisions of plan 2 or 3 of this act and pay into the industrial accident fund the premiums provided in the act, in which event he shall not be liable to respond in damages at common law or by statute for injury or death of any employee during the period covered by such premiums and shall enjoy the benefits and privileges of this act. The employee of such employer shall be deemed to have elected to come under the provisions of this act unless such employee shall execute and file with the board on proper form to be furnished for that purpose, a specific election not to be so bound, in which event he shall not enjoy the benefits or privileges of this act until such election is withdrawn. Such employer shall be classified under the provisions of section 2992 of this act as to rate of assessments, which assessment shall be paid in the manner and at the times specified under plan 2 or 3 of the Workmen's Compensation Act.

En. Sec. 17, Ch. 121, L. 1925.

CHAPTER 215A.**OWNERSHIP OF LAND BY ALIENS.**

3043.1. Definitions. For the purposes of this act, unless the context otherwise requires.

(a) "Alien" does not include a person eligible to citizenship, or one who has in good faith declared his intention to become a citizen of the United States, but does include other aliens or corporations or other organized groups of persons a majority of whom or whose capital stock is owned or controlled by aliens not eligible for citizenship or a majority of whose members are aliens:

(b) "Land" does not include lands containing valuable deposits of minerals, metals, iron, coal or fireclay or the necessary land for mills and machinery to be used in the development thereof and the manufacture of the products therefrom but does include every other kind of land and every interest therein and right to the control, possession, use, enjoyment, rents, issues or profits thereof except a mortgage and except a right to the possession, use or enjoyment of land for a period of not more than ten years for a purpose for which an alien is accorded the use of land by a treaty between the United States and the country whereof he is a citizen.

(c) "Land" also includes any share or interest in a corporation or other organized group of persons deemed an alien in this act which has title to land either heretofore or hereafter acquired;

(d) To "own" means to have the legal or equitable title to or the right to any benefit of;

(e) "Title" includes every kind of legal or equitable title;

(f) Ownership of or title to land acquired by inheritance or in good faith either under mortgage or in the ordinary course of justice in the collection of debts, or acquired by a female citizen afterwards expatriated by marriage to an alien, is excluded;

(g) "Inheritance" includes devise;

(h) "Mortgage" includes every kind of lien upon lands;

(i) A mortgage of land under which an alien is entitled before default to any control, possession, use or enjoyment of the land, is an absolute conveyance;

(j) "Person" includes an individual, partnership, corporation or any other organized group of persons; and

(k) To "own" also means to have or hold any contract or agreement with the owner or possessor of land whereby the holder of such contract or agreement is required or permitted to possess, use or occupy such land.

En. Sec. 1, Ch. 58, L. 1923.

For text treatment of this subject see vol. 1 Cal. Jur. 927.

3043.2. Alien cannot hold land—Forfeiture. An alien shall not own land or take or hold title thereto. No person shall take or hold land or title to land for an alien. Land now held by or for aliens in violation of the constitution of the state is forfeited to and declared to be the property of the state. Land hereafter conveyed to or for the use of aliens in violation of the constitution or of this act shall thereby be forfeited to and become the property of the state. Nothing herein contained shall be construed to destroy or limit existing or vested rights of any person at the time of the passage of this act.

En. Sec. 2, Ch. 58, L. 1923.

3043.3. Other disqualifications of aliens. An alien is not qualified to be trustee under a will, executor, administrator or guardian, if any part of the estate is land; provided, an alien now lawfully acting in such capacity may continue for not more than two years.

En. Sec. 3, Ch. 58, L. 1923.

3043.4. Forfeiture of lands when. If hereafter an alien acquires land by inheritance or in good faith either under mortgage or in the ordinary course of justice in the collection of debts and, remaining an alien, hold the same for more than twelve years from the date title was so acquired or control or possession taken, the land shall be forfeited to the state.

En. Sec. 4, Ch. 58, L. 1923.

3043.5. Foreclosure of mortgages. If an alien, claiming or holding under a mortgage, has control, possession, use or enjoyment of the mortgaged land, the obligations secured by the mortgage shall be deemed matured and the mortgage shall be foreclosed; and if the land be not sold under foreclosure within three years after the alien has obtained control, possession, use or enjoyment, the mortgage and the obligation thereby secured shall be forfeited to the state and shall be foreclosed for the use of the state.

En. Sec. 5, Ch. 58, L. 1923.

3043.6. Certain transfers to aliens forbidden—Penalty. Whoever

(a) Knowingly transfers or conveys land or title to land to an alien; or

(b) Knowingly takes land or title to land in trust for an alien, or

(c) Holding in trust for an alien land or title to land, either heretofore or hereafter acquired, fails for thirty days after acquiring knowledge or notice that he holds in trust for an alien to disclose the fact to the attorney general or the prosecuting attorney of the county where the land is situated; or

(d) Being an alien and having a title to land or control, possession, use or enjoyment of land, whether heretofore or hereafter acquired, refuses to disclose to the attorney general or the prosecuting attorney of the county where the land is situated the nature and extent of his interest in and title to the land; or

(e) Being an officer or agent of a corporation or other organized group of persons which has title to land or control, possession, use or enjoyment of land, whether heretofore or hereafter acquired, refuses to disclose to the attorney general or the prosecuting attorney of the county where the land is situated the nature and extent of his interest in and title to the land; or

(f) Being an officer or agent of a corporation or other organized group of persons which has title to land or control, possession, use or enjoyment of land, whether heretofore or hereafter acquired, refuses to disclose to the attorney general or the prosecuting attorney of the county where the land is situated the nature and extent of the interest of persons not citizens of the United States in the corporation or other organized group of persons; or

(g) Being an officer or agent of a corporation or other organized group of persons which holds in trust for an alien title to land or control or possession of land, whether heretofore or hereafter acquired, refuses to disclose to the attorney general or the prosecuting attorney of the county where the land is situated the nature and extent of the alien's interest in and title to the land; or

(h) Wilfully counsels, aids or abets another in violating or evading this act,

Is guilty of a misdemeanor and punishable by a fine of not less than one hundred dollars (\$100) or more than one thousand dollars (\$1,000) or six months in jail or both such fine and imprisonment.

En. Sec. 6, Ch. 58, L. 1923.

3043.7. Disposal of forfeited property. Property forfeited to the state by this act shall inure to the permanent common school fund and be managed and disposed of accordingly.

En. Sec. 7, Ch. 58, L. 1923.

3043.8. Exceptions. This act shall not impair any title or right heretofore or hereafter acquired from or derived through an alien in good faith, and for value by a person not under an alien's disability.

En. Sec. 8, Ch. 58, L. 1923.

CHAPTER 216.

VOCATIONAL REHABILITATION AND EDUCATION.

3051.1. Conditions and amount of monthly allowance. A disabled person receiving vocational training under the direction of the state rehabilitation bureau may, in addition to the benefits described in sections 3044 to 3051 inclusive of the Revised Codes of Montana of 1921, be granted a monthly maintenance allowance while in training. This allowance shall be for the purpose of assisting the person receiving such training to meet his actual living expenses and shall never, in the case of a single person without dependents exceed forty dollars (\$40) per month, nor in the case of a married person or a single person with one or more dependents exceed sixty dollars (\$60) per month; nor in any case shall the total payment for maintenance purposes exceed the sum of the maximum monthly allowance for a period of twelve months. Maintenance shall not be paid where:

(a) The person receiving such training is drawing sufficient compensation from the state industrial accident board or from any other state, county, municipal or federal board or commission to cover his living expense.

(b) The person receiving such training is a minor and has parents who are able to support him while in training.

(c) The person receiving such training has relatives, friends, or a former employer able and willing to maintain him.

(d) The person receiving such training is financially able to support himself, or has, or can obtain part time employment, without injury to his health or training, which will enable him to get along without outside assistance.

(e) The person receiving such training is taking a correspondence course only.

(f) The person receiving such training is taking a college course in one of our institutions for higher education.

(g) The person receiving such training and his parents or guardian (in the event such person is a minor) have not filed, with his applica-

tion, an affidavit showing what property he or his parents own, and also showing that his relatives, friends or former employer are unwilling to maintain him.

En. Sec. 1, Ch. 20, L. 1925; Amd. Sec. 1, Ch. 1, L. 1927.

3051.2. Who entitled to allowance—How ascertained. Only as much of the maximum maintenance allowance as is actually needed shall be paid. The beneficiary's income and resources shall be ascertained and his allowance from the state adjusted accordingly. A person in an industrial establishment shall receive no maintenance from the rehabilitation bureau if his wages from the firm equal his living expenses. A fair and equitable adjustment will at all times be made in cases where a person receives a wage, salary or income which can and should be applied in defraying the cost of board, lodging and other necessary expenses while in training.

En. Sec. 2, Ch. 20, L. 1925; Amd. Sec. 2, Ch. 1, L. 1927.

3051.3. Payments, how made. That portion of the money appropriated for vocational rehabilitation purposes which is actually necessary may be drawn upon in making the payments described above; provided that no part of the funds appropriated to match the allowance received by the state from the federal board for vocational education may be so used. Payments will be made monthly by warrants issued by the state auditor upon order of the state agent for civilian rehabilitation.

En. Sec. 3, Ch. 20, L. 1925; Amd. Sec. 3, Ch. 1, L. 1927.

CHAPTER 219.

HOURS OF LABOR.

3071. Hours of labor—Underground miners.

Cited in *Wirta v. North Butte Mining Co. et al.*, 64 Mont. 279, 289, 30 A. L. R. 964, 210 Pac. 332.

CHAPTER 220.

PAYMENT OF WAGES—PROTECTION OF DISCHARGED EMPLOYEES.

3089. Judgment for wages shall include attorney's fee.

In an action to recover wages due, the plaintiff, if successful, is entitled to a reasonable attorney's fee as a part of the costs without being required to either plead or prove such item. *Gardiner v. Eclipse Grocery Co.*, 72 Mont. 540, 234 Pac. 490.

3090. Equal pay for women for equivalent service.

Sections 3090, 3091 were cited in *Farrell v. Yellowstone County*, 68 Mont. 313, 316, 218 Pac. 559.

CHAPTER 221.

PROHIBITION AGAINST CHILD LABOR.

3095. Employment of children under sixteen years in certain occupations prohibited.

The complaint in an action by a minor against a railway company to recover damages for personal injuries under this section, making it negligence per se for

an employer to hire a child under sixteen years of age, must allege that defendant employed plaintiff knowing him to have been under that age. *Fallon v. Chicago etc. Ry. Co.*, 61 Mont. 130, 200 Pac. 453.

CHAPTER 223.

MEDICINE—REGULATION OF PRACTICE.

3122. Practicing medicine without certificate—Penalties.

Cited in *Swanz v. Clark*, 71 Mont. 385, 388, 229 Pac. 1108.

3123. Fees — Reciprocity provisions. Candidates for examination shall pay in advance to the secretary of the board of medical examiners a fee of fifty dollars (\$50), which fee shall defray the entire expenses of said candidate for examination before the aforesaid board of examiners. Anyone failing to pass the required examination shall be entitled to a second examination within six months without fee. Candidates who shall be granted right to practice medicine in the state of Montana under the reciprocity provisions of section 3118 of the Revised Codes of Montana, 1921, without examination, shall, before receiving certificate of authorization to practice medicine in this state pay to the secretary of the board of medical examiners a fee of seventy-five dollars (\$75), and the money so received shall be turned over to the state treasurer, to be by him deposited in the medical board fund as provided by law.

Amd. Sec. 1, Ch. 68, L. 1927.

3124. Per diem—Medical board fund—Reports. Each member of the board is hereby allowed the sum of ten dollars (\$10) per day and mileage while in the active and necessary discharge of his duties. And there is hereby established a fund to be known as the medical board fund. The money in such fund shall only be paid out by warrant on said fund on an order drawn by the secretary of said board, countersigned by the president. The rate of mileage and attendance before said board shall be the same as is now allowed in justice of the peace courts. And the board must report annually on the first Monday in November to the governor, which report must show all the transactions of the board, giving the number of applications received, and from whom received, the number of certificates granted and rejected, and the names of those receiving certificates and those rejected, giving the reasons therefor, the amount of money received, the expenses, the fees and mileage paid, and by whom received, and the amount of money remaining in said fund.

Amd. Sec. 1, Ch. 68, L. 1927.

CHAPTER 224.

OSTEOPATHY—REGULATION OF PRACTICE.

3127. Regulation osteopathic licenses, examinations and renewals—Unlawful to practice without a certificate. It shall be unlawful for any person to practice osteopathy in this state without a license from said board; provided, that all persons practicing osteopathy within this state prior to the passage of this act and holding a diploma from a legally

authorized school of osteopathy of good repute as such, and wherein the course of study comprises twenty months or four terms of five months each, may be licensed to practice osteopathy in the state by submitting to said board of osteopathic examiners such diploma and satisfying such board that they are legal holders thereof, or by undergoing an individual examination as hereinafter provided at a regular meeting of said board for examination. The fee for such license shall be twenty dollars payable to the secretary of said board of examiners when application is made for certificates; provided, that in case of failure of any applicant to pass a satisfactory examination, he will be entitled to a second examination without charge at the next succeeding meeting of the board; provided that all graduates of a reputable school of osteopathy who presents themselves for examination and a license, and who have graduated later than April, 1907, shall present satisfactory evidence to the board of having actually attended such a school for a period of not less than three school years of nine months each; provided that all graduates of reputable schools of osteopathy who present themselves for examination and who have graduated later than January, 1919, shall present satisfactory evidence to the board of having actually attended such a school for a period of not less than four school years of eight months each, which was preceded by a four-years' high school course or its scholastic equivalent.

Each individual, after the first year of registration, holding a certificate to practice under this act and who is in active practice in this state, shall on or before the first day of April of each year pay a renewal fee of two (\$2) dollars to the secretary of the board of osteopathic examiners; and each individual, after the first year of registration, holding a certificate to practice under this act, who is not in active practice, shall on or before the first of April of each year pay a renewal fee of one (\$1) dollar to the secretary of the board. The secretary of the board shall before the 15th of March of each year send a notice to each individual holding a valid certificate to practice under this act and from whom a fee is due stating that such fee is due.

The certificate to practice under this act automatically becomes void when the renewal fee is not paid at the time named. Provided that the board may reinstate a practitioner whose certificate has lapsed upon the payment of all back renewal fees or upon the payment of ten (\$10) dollars if the lapsed fees exceed that amount.

Amd. Sec. 1, Ch. 79, L. 1925.

CHAPTER 225A.

PODIATRY—REGULATION OF PRACTICE.

3154.1. Podiatry defined. Podiatry (sometimes called chiropody) shall, for the purpose of this act, mean the diagnosis, medical and surgical treatment of ailments of the human foot. Podiatrist shall mean one practicing podiatry.

En. Sec. 1, Ch. 2, L. 1923.

3154.2. License—Regulation amputations. It shall be unlawful for any person to profess to be a podiatrist, to practice or assume the duties

incident to podiatry, without first obtaining from the state board of medical examiners a license authorizing the practice of podiatry in this state, except as hereinafter provided. No podiatrist shall amputate the human foot or toe or toes.

En. Sec. 2, Ch. 2, L. 1923.

3154.3. Podiatry board—Examinations—Requirements—Fees. That at the annual meeting of the state board of medical examiners it shall select two physicians from its own membership and two practicing podiatrists, resident of this state and actively engaged in the practice of podiatry, and graduate of an accredited school of podiatry or chiropody, who, together with the secretary of the state board of medical examiners, shall constitute the podiatry examiners for the year. The examinations shall be held semi-annually at such places and time as the state board of medical examiners shall direct. All applicants for license shall have attained the age of twenty-one years and shall be of good moral character; they shall have had at least one year of instruction in and be graduates of some school of podiatry, recognized as being in good standing by the state board of medical examiners, but after July 1st, 1925, no school of podiatry shall be accredited by said board as a school of good standing which does not require for graduation a course of study of at least two years, provided, however, that all podiatrists, actively engaged in the practice of podiatry one or more years in the state of Montana, prior to July, 1923, whether graduates or not, shall, upon furnishing proof thereof to said board and upon payment of a fee of ten dollars (\$10), be entitled to a license without examination; and applications for such licenses shall be filed with the state board of medical examiners not later than the first day of January, 1924; and provided, further, that upon payment of a fee of twenty-five dollars (\$25), a license without examination may be issued to podiatrists of other states maintaining equal statutory requirements for the practice of podiatry and extending the same reciprocal privilege to this state.

En. Sec. 3, Ch. 2, L. 1923.

3154.4. Subjects of examination—Requirements—Fees. After the passage of this act, any person not exempt from examination under section 3 of this act and desiring a license to practice podiatry shall be examined in the following subjects: Anatomy, chemistry, dermatology, diagnosis, materia medica, pathology, physiology, therapeutics, clinical and orthopedic podiatry, limited in their scope to the treatment of the human foot, and, if found qualified, shall receive a license. The minimum requirements for a license shall be a general average of seventy-five per cent (75%) in all the subjects involved, and not less than fifty per cent (50%) in any one subject. Examination fees of twenty-five dollars (\$25) shall be paid to the secretary of the state board of medical examiners. Any applicant failing in the examination and being refused a license shall be entitled within six months of such refusal to a re-examination, but two such re-examinations shall exhaust his privilege under the original examination.

En. Sec. 4, Ch. 2, L. 1923.

3154.5. Registered podiatrists — Licenses — Filing — Renewals. All licensees shall be designated as registered podiatrists, and shall not use any title or abbreviations thereof without the designation "Registered Podiatrist, practice limited to the foot," and shall not mislead the public as to their limited professional qualifications to treat human ailments. All licenses shall be recorded in the manner of other medical licenses in the office of the secretary of the state board of medical examiners. A renewal license fee of five dollars (\$5) shall be paid annually on July 1st of each year, and if not paid within three months, the license shall be revoked and shall only be reissued upon original application and payment of fee of fifty dollars (\$50). All licenses shall be conspicuously displayed at the office of other places of practice.

En. Sec. 5, Ch. 2, L. 1923.

3154.6. Licenses—Grounds of revocation. The state board of medical examiners may, after due hearing, refuse to grant, revoke or renew any license provided for in this act to a person, otherwise qualified, who obtained said license by fraudulent [re]presentation, for incompetency in practice, for use of untruthful or improbable statements to patients or in his advertisements, for habitual intoxication or for unprofessional and immoral conduct, or for selling or giving away alcohol or drugs for any other legitimate purposes, but said board may reissue a license after a lapse of six months.

En. Sec. 6, Ch. 2, L. 1923.

3154.7. Medical board fund. All fees and licenses shall be paid to and collected by the secretary of the state board of medical examiners, who shall at least quarterly each year pay the same to the state treasurer, and the state treasurer shall receive and accept such moneys and credit same to a special fund to be known and designated as "medical board fund," and such fund shall not be used or expended for any purpose other than as provided for in section 3124, Revised Codes of Montana, 1921.

En. Sec. 7, Ch. 2, L. 1923.

3154.8. Board of examiners — Compensation — Expenses — Claims. Each member of the board of examiners, except the secretary and the physician members who are otherwise paid for the performance of their duties as medical examiners, shall receive for his services out of the funds created by the payment of fees by applicants for licenses, the sum of five dollars (\$5) per diem and necessary traveling and incidental expenses, while the secretary shall receive his necessary expenses for services which cannot be performed at the capital. All printing, postage and other contingent expenses, necessarily incurred, shall be paid from said funds, and all expenses shall be itemized, verified, audited, upon presentation by the state board of medical examiners, and a warrant drawn therefor by the state auditor on the medical board fund in the same manner as other expenses of the state board of medical examiners.

En. Sec. 8, Ch. 2, L. 1923.

3154.9. Penalty. Any person who shall knowingly violate any of the provisions of this act and upon conviction thereof shall be fined the sum not exceeding one thousand dollars (\$1,000) or be imprisoned in the county jail not to exceed two years, or both.

En. Sec. 9, Ch. 2, L. 1923.

3154.10. Exceptions. This act shall not apply to any physician licensed by the state board of medical examiners of this state, nor to any practitioner licensed under sections 3125 to 3154 of the Revised Codes of Montana for 1921, nor to surgeons of the United States army, navy and United States public health service, when in actual performance of their official duties.

En. Sec. 10, Ch. 2, L. 1923.

CHAPTER 226.

OPTOMETRY—REGULATION OF PRACTICE.

3155. Practice of optometry defined.

Cited in *Swanz v. Clark*, 71 Mont. 385, 387, 229 Pac. 1108.

3156. Certain practices by optometrists prohibited. It shall be unlawful for any person:

Subdivision 1. To practice optometry in the state of Montana unless he shall first have obtained a certificate of registration, in the manner hereinafter provided, and filed the same or a certified copy thereof with the county clerk of the county of his residence, excepting such persons who at the present time are regularly registered optometrists and possess a valid, unrevoked certificate of registration; or

Subdivision 2. To sell or barter, or offer to sell or barter any certificate of registration issued by the state board of optometry; or

Subdivision 3. To purchase or procure by barter any such certificate of registration with intent to use the same as evidence of the holder's qualification to practice optometry; or

Subdivision 4. To alter with fraudulent intent in any material regard such certificate of registration; or

Subdivision 5. To use or attempt to use any such certificate of registration which has been purchased, fraudulently issued, counterfeited or materially altered as a valid certificate of registration; or

Subdivision 6. To practice optometry under a false or assumed name; or

Subdivision 7. To wilfully make any false statement in a material regard in an application for an examination before the state board of optometry or for a certificate of registration; or

Subdivision 8. To advertise by displaying a sign or by otherwise holding himself out to be an optometrist or optician without having at the time of so doing a valid unrevoked certificate of registration; or

Subdivision 9. To replace or duplicate ophthalmic lenses with or without a prescription or to dispense ophthalmic lenses from prescriptions, without having at the time of so doing a valid, unrevoked certificate of registration as an optometrist; provided, however, that the provisions

hereof shall not be construed so as to prevent an optical mechanic from doing the merely mechanical work upon such lenses; or

Subdivision 10. To take or make any measurements for the purpose of fitting or adapting ophthalmic lenses to the human eye, without having at the time of so doing a valid, unrevoked certificate of registration; and any person who shall take or make any measurements or use any mechanical device whatsoever for such purpose or who shall in the sale of spectacles or eye glasses or lenses use, in the testing of the eyes therefor, lenses other than the lenses actually sold, shall be deemed to be practicing optometry within the meaning thereof.

Amd. Sec. 1, Ch. 171, L. 1925.

3157. State board of examiners in optometry. A board is hereby created to be known as the Montana state board of examiners in optometry which shall consist of three members appointed by the governor. No person shall be eligible to appointment who is not a registered optometrist of the state of Montana and actually engaged in the practice of optometry in the state of Montana during the term of his office. Each of the members shall hold office for a term of six years or until his successor is appointed and qualified and shall be so classified that one member of said board shall retire every two years. The present members of the Montana state board of examiners in optometry shall continue to serve and act as members of the state board of optometry, but under the provisions of this act, during their respective terms or until their successors are appointed and qualified. The members of said board, before entering upon their duties, shall respectively take and subscribe to the oath required to be taken by other state officers, which shall be administered by the secretary of state, and filed in his office; and said board shall have a common seal. Appointments to fill vacancies caused by death, resignation or removal shall be made for the residue of such term by the governor.

Amd. Sec. 2, Ch. 171, L. 1925.

3158. Officers—Meetings—Records. Said board shall choose at its first regular meeting, and annually thereafter, one of its members president and one secretary thereof, who severally shall have the power during their term of office to administer oaths and take affidavits, certifying thereto under their hands and the seal of the board. Said board shall meet at least once in each year at Helena, or some other place designated by the president, on the fourth Monday of July for the purpose of giving examinations in optometry, and in addition thereto, whenever, and wherever the president and secretary thereof shall call a meeting. The secretary of said board shall keep a full record of the proceedings of said board, which records shall at all reasonable times be open to public inspection.

Amd. Sec. 3, Ch. 171, L. 1925; Amd. Sec. 1, Ch. 44, L. 1927.

3159. Regulation of examinations. Subdivision 1. Every person, before beginning to practice optometry in this state shall pass an examination before said board of examiners. All examinations shall be practical in character and designated to ascertain the applicant's fitness to practice

the profession of optometry and shall be conducted in the English language. The board shall, from time to time, publish and distribute the examination requirements for a certificate to practice optometry in the state of Montana.

Subdivision 2. No person shall be eligible to take said examination who is not 21 years of age, and who is not a citizen of the United States of America, and who is not of good moral character.

Subdivision 3. On and after July 1, 1925, no person shall be eligible to take said examination unless he shall have certificates of graduation from an accredited high school and from a school of optometry wherein the practice and science of optometry is taught in a course of study covering four semesters, or two years, of actual attendance. In lieu of said certificates of graduation an applicant for examination may, with like effect, furnish an affidavit that he has practiced optometry exclusively for a period of at least six years in some other state or states.

Subdivision 4. Every person desiring to be examined in optometry shall file an application in the manner prescribed by said board at least four weeks before the examination shall be held, and a fee of twenty-five dollars (\$25) shall accompany said application.

Subdivision 5. Every person successfully passing said examination shall be registered in the board register, which shall be kept by the secretary of said board, and upon the payment of a fee of ten dollars (\$10) shall receive a certificate of registration signed by the members of said board.

Subdivision 6. In case an applicant for a certificate of registration has been admitted to practice optometry in any state, and has secured an average of seventy-five (75) per cent in his examination in such other state, he may, in the discretion of the said board, be granted a certificate to practice his profession in Montana, without examination, upon his payment of all fees, provided the state from which said applicant comes offers equal privileges to applicants for certificates of registration from this state.

Amd. Sec. 4, Ch. 171, L. 1925.

Cited in *Swanz v. Clark*, 71 Mont. 385, 387, 229 Pac. 1108.

3161. Renewal of registration—Penalty. Every registered optometrist who desires to continue the practice of optometry in this state shall annually on or before the second day of July of each year pay to the secretary of said board a renewal fee not to exceed the sum of ten dollars (\$10) in return for which a renewal of registration shall be issued. If any person shall fail or neglect to procure his annual renewal of registration, his certificate of registration shall be revoked by said board; provided, however, that no certificate of registration shall be revoked without ninety days notice having been given to the delinquent who within such period shall have the right to the renewal of his certificate of registration on the payment of the renewal fee with a penalty of twenty-five dollars (\$25).

Amd. Sec. 4½, Ch. 171, L. 1925.

3165. Use of funds—Duty of secretary. Out of the funds coming into the possession of said board, each member thereof may receive as

compensation, the sum of fifteen dollars (\$15) and necessary expenses for each day actually engaged in the duties of his office. Such sums shall be paid from the fees received by said board under the provisions of this act, and no part of the salary or other expenses of the board shall ever be paid out of the state treasury. All moneys received in excess of said expenses, as above provided for, shall be held by the secretary as a special fund for meeting expenses of said board, and carrying out the provisions of this act, and he shall give such bonds as the board shall from time to time direct, and the secretary of said board shall make an annual report of its proceedings to the governor on the first Monday in January of each year, which report shall contain an account of all moneys received and disbursed by them pursuant to this act.

Amd. Sec. 5, Ch. 171, L. 1925.

3166. Procedure and grounds for revocation of license. Said board shall have the power to revoke any certificate of registration granted by it under this act for conviction of crime, habitual drunkenness, contagious or infectious disease, gross immorality, gross ignorance or inefficiency in his profession, or for unprofessional conduct. Unprofessional conduct shall mean: obtaining any fee by fraud or misrepresentation; employing directly or indirectly any suspended or unlicensed optician or optometrist to perform any work covered by this act; permitting another to use his certificate of registration; soliciting or sending a solicitor from house to house; treatment or advice in which untruthful or improbable statements are made; professing to cure disease; advertising in which ambiguous or misleading statements are made; the use in advertising of the expression "eye specialist" or "specialist on eyes" in connection with the name of an optometrist; provided, that this act shall not prohibit legitimate or truthful advertising by any registered optometrist and provided that before any certificate shall be revoked, the holder thereof shall have notice in writing of the charge or charges against him, and, at a day specified in said notice, at least ten days after the service thereof, be given a public hearing, and have opportunity to produce testimony in his behalf, and to confront the witness against him. Any person whose certificate has been revoked may appeal to the courts or may after the expiration of ninety days apply to have the same regranted and the same shall be regranted him upon a satisfactory showing that the disqualification has ceased.

Amd. Sec. 6, Ch. 171, L. 1925.

Cited in Swanz v. Clark, 71 Mont. 385, 389, 229 Pac. 1108.

3166A. Second revocation. Any optometrist convicted a second time for violation of the provisions of this chapter or whose certificate of registration or examination has been revoked a second time shall not be permitted to practice optometry in this state.

En. Sec. 2, Ch. 44, L. 1927.

3167. Penalty. Any person who shall violate any of the provisions of this act shall be decreed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than two hundred dollars (\$200) and

not more than five hundred (\$500) dollars, or by imprisonment in the county jail not exceeding one year, or by both fine and imprisonment as the court may determine. All fines thus received shall be paid into the common school fund of the county in which such conviction takes place.

Amd. Sec. 8, Ch. 171, L. 1925.

3169. Act not to apply to physicians and surgeons.

Cited in *Swanz v. Clark*, 71 Mont. 385, 388, 229 Pac. 1108.

CHAPTER 227.

PHARMACY REGULATIONS—SALE OF OPIATES.

3186. Sale of opium, morphine, mariahuana, and their derivatives.

It shall be unlawful for any person to sell, furnish, or dispose of any opium, morphine, alkaloid-cocaine, or alpha or beta eucaine, or codeine, or heroin, or mariahuana (*Cannabis Indica*), or any derivative, mixture, or preparation of any of them except upon the signed prescription of a physician or veterinarian duly licensed under the laws of the state; which prescription should be retained by the person dispensing the same, shall be filled but once, and of which no copy shall be taken by any person except as hereafter provided. The person dispensing the same at the time thereof shall indorse on the back of such prescription, the name, street, and house number of the person to whom dispensed; and the proprietor or manager of the store where dispensed shall keep the prescriptions in a permanent file, separate from other prescriptions, in his place of business for the period of two (2) years after the same should have been dispensed, and at any time shall allow the same to be inspected and copies thereof to be made by any peace officer, prosecuting attorney of the county where sold, or any authorized instructor [inspector] of drugs, provided that nothing herein contained shall prohibit any manufacturer or licensed druggist from selling or delivering any of the above named to a person known to be a licensed physician, licensed veterinarian, or licensed druggist, nor prohibit a physician or veterinarian from dispensing the same in good faith to his patients, nor prohibit the sale of patent or proprietary or medicinal preparations containing opium or morphine in combination or compound with other active elements, where the dose of opium is less than one-quarter grain, or morphine in more than one-twentieth grain, or codeine in more than one-quarter grain, or heroin in more than one-twelfth grain, or in which mariahuana (*Cannabis Indica*) is present in quantities not greater than one-fourth grain of the solid extract to the fluid or avoirdupois ounce.

Amd. Sec. 1, Ch. 91, L. 1927.

L. 1921. *State v. Wong Fong*, 75 Mont. 81, 241 Pac. 1072.

Cited in *State v. Wong Fong*, 75 Mont. 81, 83, 241 Pac. 1072.

To the extent of any conflict between them, this section is superseded by section 3189 as enacted by chapter 202,

3188. Penalty for violation of act.

Cited in *State v. Wong Fong*, 75 Mont. 81, 84, 241 Pac. 1072.

3189. Regulation sale of opium and other narcotics.

This section, prohibiting the sale, inter alia, of coca leaves or a derivative thereof, supersedes section 3186, enacted in 1911, and section 11239, enacted in 1895, so far as it comprehends or conflicts with the subject matter of the two latter sections, and that the trial court's holding that an information charging the unlawful sale "of cocaine, a derivative of coca leaves" was based upon that section was correct. *State v. Wong Fong*, 75 Mont. 81, 241 Pac. 1072.

In the prosecution for the illegal sale of morphine under this section, the information need not contain the negative averment that the drug was not sold upon prescription; if it does contain such an allegation it is surplusage, rendering

proof thereof unnecessary, the fact that it was so sold being a matter of defense. *State v. Finley*, 72 Mont. 42, 231 Pac. 390.

An information charging a violation of the narcotic law was insufficient for failure to state the name of the purchaser of the drug and that the sale was made at retail or to a consumer. *State v. Hem*, 69 Mont. 57, 220 Pac. 80.

The intent of the legislature to prohibit the possession and use of narcotics under certain conditions is sufficiently expressed in the title of chapter 202, L. 1921 (secs. 3189-3202). *State v. Mark*, 69 Mont. 18, 220 Pac. 94.

Sections 3189-3202 were cited in *State v. Mun*, 76 Mont. 278, 280, 246 Pac. 257.

3190. Remedies excepted from act.

Under the rule that an indictment or information need not negative an exception contained in the statute under which the prosecution is had, unless the exception is necessary to a complete definition of the offense sought to be charged, an information charging unlawful possession of opium was sufficient as against the objection that the failure of the pleader

to negative the exception contained in this section, providing that the act should not apply to the possession of preparations and remedies which do not contain more than two grains of opium to the ounce, rendered it insufficient to charge a public offense. *State v. Mun*, 76 Mont. 278, 246 Pac. 257.

3192. Use of opiates by physicians, veterinary surgeons and dentists.

Cited in *State v. Mun*, 76 Mont. 278, 282, 246 Pac. 257.

3200. Regulation of possession or control of drugs.

Under this section it is unlawful for any person (other than those permitted by the act to have lawful possession of them) to have in his possession any of the drugs mentioned therein, and the possession or control of any of such drugs shall be presumptive evidence that the drug is possessed or controlled in violation of the law; hence the contention that the presumption of guilt from possession does not arise until it be first proved that the possession was obtained contrary to the provisions of the act is without merit. (Dictum in *State v. Mark*, 69 Mont. 18, to the contrary, disapproved.) *State v. Mun*, 76 Mont. 278, 246 Pac. 257.

The provision of chapter 202, L. 1921, placing upon defendant charged with the unlawful possession of narcotics the burden of proving that his possession thereof came within one of the exceptions enumerated in the act and was therefore lawful, did not deprive him of any constitutional guaranty and that an instruction in keeping with the statutory provision was properly given, the evidence clearly showing unlawful possession. *State v. Mark*, 69 Mont. 18, 220 Pac. 94.

Cited in *State v. Finley*, 72 Mont. 42, 47, 231 Pac. 390.

Cited as section 12, chapter 202, L. 1921, in *State v. Mark*, 69 Mont. 18, 25, 220 Pac. 94.

3202. Penalty for unauthorized possession or sale of narcotic drugs.

Any person, either principal or agent except such persons as are duly authorized by law, having possession or control of any drug mentioned in sections 3189 to 3201, both inclusive, of the Revised Codes of Montana of 1921, shall, upon conviction, be punished by a fine of not less than five hundred dollars (\$500), nor more than three thousand dollars (\$3,000), and by imprisonment in the state prison for not less than one year, nor more than five years.

Any person, either principal or agent, who sells, barter, exchanges, distributes, gives away, or in any manner disposes of any of the drugs mentioned in sections above designated to a person over the age of eighteen (18) years, contrary to the provisions of said sections of the Revised Codes of Montana of 1921, shall upon conviction, be punished by a fine of not less than one thousand (\$1,000), nor more than three thousand dollars (\$3,000), and by imprisonment in the state prison for not less than five (5) years, nor more than ten (10) years.

Any person, either principal or agent, who sells, barter, exchanges, distributes, gives away, or in any manner disposes of any of the drugs mentioned in the sections above designated, contrary to the provisions of said sections of the Revised Codes of Montana of 1921, to any person of the age of eighteen (18) years, or under, shall upon conviction be punished by imprisonment in the state prison for not less than five years nor more than life.

Amd. Sec. 1, Ch. 36, L. 1923; Amd. Sec. 1, Ch. 38, L. 1925.

This section before amendment provided that the jury may fix the punishment by their verdict by a fine not exceeding \$1,000 or "by imprisonment for not more than three years, or by both such fine and imprisonment." The court instructed the jury that in case they found defendant guilty they must assess a fine of not less than \$500 nor more than \$3,000 and imprisonment in the state prison for not less than one nor more than five years. Held, prejudicially erroneous. *State v. Mark*, 69 Mont. 18, 220 Pac. 94.

The title of chapter 36, L. 1923, amend-

ing "section 3202 of chapter 202 of the Revised Codes of 1921, providing a penalty," is so defective as to render the chapter void, it being impossible to determine therefrom what act it was intended to amend nor what offense a penalty was provided for. *State v. Mark*, 69 Mont. 18, 220 Pac. 94.

Where, as in this section before amendment, the law does not fix the place of imprisonment, the place is in the county jail or city prison, and therefore a judgment not prescribing where the imprisonment shall be served is not invalid. *State v. Toy*, 65 Mont. 230, 211 Pac. 303.

Cited in *State v. Wong Fong*, 75 Mont. 81, 83, 241 Pac. 1072.

3202.1. Sale of peyote and mescal button forbidden. That it shall be unlawful for any person, firm, corporation or association to sell, furnish, or give away, or offer to sell, furnish or give away, or to have in his or its possession peyote (pellote), botanically known as *Lophophora Williamsii*; or *Agava Americana*, commonly known as the mescal button; or any compound, derivative, or preparation thereon [thereof].

En. Sec. 1, Ch. 22, L. 1923.

The provisions of section 4 of article III of the constitution of Montana, guaranteeing the free exercise and enjoyment of religious profession and worship, cannot be invoked as a protection against

legislation prohibiting the unlawful possession of peyote (a narcotic) under the claim that the drug was possessed for use by members of a church, for sacramental purposes. *State v. Big Sheep*, 75 Mont. 219, 243 Pac. 1067.

3202.2. Penalty. Any person who shall violate any of the provisions of this act shall be guilty of a misdemeanor and upon conviction thereof shall be fined not to exceed five hundred (\$500) dollars, or imprisonment in the county jail for a period of not to exceed six months, or by both such fine and imprisonment.

En. Sec. 2, Ch. 22, L. 1923.

CHAPTER 228.

NURSING—REGULATION OF PRACTICE.

3210. Requirements of applicants for registration. All applicants for registration under the provisions of this act shall furnish satisfactory evidence that he or she is at least twenty-one years of age, of good moral character, and has been graduated from a training school of nurses connected with a general hospital approved by the board, where a systematic course of at least three years' instruction is given, except in the cases hereinafter provided for; provided, that the board may grant proper credit upon such three year period to any student for previous training and study, under such rules and regulations as the board may prescribe. No training school for nurses shall accept students under eighteen years of age nor students who have not had a preliminary education of at least two years of high school; provided, that such training schools may accept students who have not had a preliminary education of at least two years of high school upon the recommendation of the board of examiners for nurses, each recommendation to be given by the board only when such students submit evidence, satisfactory to the said board, that they have educational qualifications equivalent to at least two years of high school. All persons registered under the provisions of this act shall pay to the secretary of said board a registration fee of fifteen dollars.

Amd. Sec. 1, Ch. 123, L. 1925.

3211A. Renewal of registration—Fees. During the month of June of each year, every registered nurse shall renew his or her certificate of registration, for the year beginning June first, with the board of examiners for nurses, for which renewal a fee of one dollar shall be paid to the treasurer of said board. The board may grant renewal, without fee, for reasons which are satisfactory to it, and upon granting such renewal the secretary of such board shall issue a certificate of renewal of registration.

En. Sec. 3, Ch. 123, L. 1925.

CHAPTER 233.

REGULATION OF LIVESTOCK INDUSTRY—DAIRY LICENSES.

3257.1. Appropriation fees livestock commission fund. All fees, earnings or moneys credited to the livestock commission fund are hereby appropriated for the use of the livestock commission.

En. Sec. 1, Ch. 44, L. 1923.

CHAPTER 234.

THE LIVESTOCK SANITARY BOARD AND STATE VETERINARY SURGEON—QUARANTINE, INSPECTION, AND DESTRUCTION OF DISEASED STOCK.

3267.1. Governor may prohibit importation of diseased animals. Whenever the governor has good reason to believe that any disease dangerous or inimical to the livestock or poultry industry, or dangerous to dogs or other animals, had become epidemic in certain localities in any other state, territory, District of Columbia, or other country, he shall issue a

proclamation designating such localities, and prohibiting the importation therefrom into this state, except under such restrictions as he may deem proper, of any livestock, poultry, dogs or other animals, or articles, or commodities likely to convey such disease or diseases.

En. Sec. 1, Ch. 31, L. 1925.

3267.2. Penalty. Any person who, after the publication of such proclamation knowingly receives any livestock, dog, fowl, or other animal, or article, or commodity designated in such proclamation as likely to convey disease from any of the prohibited districts, and transports or conveys the same within the limits of this state, is punishable by imprisonment in the county jail, for not less than sixty days, nor more than eight months, and by a fine of not less than \$300, nor more than \$5,000, or by both such fine and imprisonment, and is further liable for any and all damages and loss that may be sustained by any person or persons by reason of the disobedience of such proclamation.

En. Sec. 2, Ch. 31, L. 1925.

3282. Licenses for producers of dairy products. It shall be unlawful for any persons, firm or corporation to conduct any dairy or milk plant, condensed milk factory, powdered milk factory, where either whole or skimmed milk is used for purposes of manufacture into powdered milk within the state of Montana, without first securing a license issued by the livestock sanitary board, which license shall expire on the last day of December of the current year in which it is issued; provided, also that said license may be revoked at any time by the livestock sanitary board or state veterinary surgeon when they, or he, shall determine that the person to whom a license is issued has failed to comply with the rules and regulations of the livestock sanitary board or failed to conduct such an establishment in a sanitary manner. All license fees collected under the terms of this section shall be paid into the general fund. The following schedule of license fees shall be charged for all licenses issued under the provisions of this section by the livestock sanitary board.

Schedule of License Fees.

Dairies of twenty cows or less, selling milk or cream or both, shall pay an annual license fee of one dollar.

Dairies of over twenty cows, selling milk or cream, shall pay an annual license fee of two dollars and fifty cents.

Milk plants shall pay an annual license fee of ten dollars.

Condensed milk factories or powdered milk factories having an output of less than 500,000 pounds shall pay an annual license fee of five dollars.

Condensed milk factories or powdered milk factories having an output of more than 500,000 pounds, shall pay an annual license fee of twenty-five dollars.

Amd. Sec. 11, Ch. 35, L. 1923.

3282.1. Effect unconstitutionality act. If any section of this act shall be declared unconstitutional for any reason, the remainder of the act shall not be affected thereby.

En. Sec. 12, Ch. 35, L. 1923.

CHAPTER 236.

RECORDING OF MARKS AND BRANDS.

3304. Right of owner of recorded brand.

Cited in *Klind v. Valley County Bank of Hinsdale*, 69 Mont. 386, 391, 222 Pac. 439.

CHAPTER 239.

INSPECTION OF LIVESTOCK ON REMOVAL FROM ONE COUNTY TO ANOTHER.

3324. Inspection of cattle on transfer—Duty of railroads. From and after the passage of this act, it shall be the duty of any and all persons, associations or corporations removing or taking livestock or meat cattle from one county to another within this state by railroad, or in any other manner whatsoever, to cause the same to be inspected for brands by a state stock inspector, and no railroad company shall accept such livestock for shipment, unless the shipper shall produce a certificate of their inspection for brands as herein required: (provided, however, that the livestock commission may authorize said shipments to be made without said inspection, in the event there is an inspection made at destination; and, provided, further, that the provisions of this act shall not apply to the said stock when driven by the owner from one county to another for the purpose of pasturing, feeding, or changing the range thereof, nor to any stock so removed or taken by any person, association, or corporation, when such stock is used in the ordinary conduct of his business, and such person, association, or corporation has been the owner of said stock to be removed for at least three months.)

Amd. Sec. 1, Ch. 26, L. 1923.

3327.1. Authority to inspect and seize stolen stock. From and after the passage and approval of this act, all state stock inspectors inspecting any livestock either before or after shipment or removal from one county to another within the state of Montana, shall, in addition to the powers heretofore granted them by law, possess the further authority to inspect and seize, either at the point of shipment or at destination, any livestock or the proceeds thereof, which said inspector may have reason to believe is stolen, or upon which brands have been altered or obliterated, or which does not conform to the description contained on the tally sheet furnished by the shipper thereof, or to the description contained in any certificate of inspection issued before shipment or removal of said livestock.

En. Sec. 1, Ch. 37, L. 1927.

3327.2. Disposal of seized property. Upon taking possession of any such livestock in the exercise of the authority granted by this act, the inspector may retain same in his possession for not to exceed fifteen days at the expense of the owner, for the purpose of making further investigation relative to its ownership, or may either at once or at any time within said period of fifteen days, sell said livestock in the open market for the best available price and remit the proceeds, less the cost of keeping

and sale, to the state livestock commission, together with a full description of the animal or animals sold, giving marks or brands, if any, and a statement of the reason for the seizure and sale thereof. Said proceeds shall be turned over by the livestock commission to the state treasurer, and by the latter be deposited in the estray stock fund where it shall be subject to claim by the owner of the livestock in the same manner and for the same length of time as is provided by law for the making of claims against said fund.

En. Sec. 2, Ch. 37, L. 1927

CHAPTER 241.

ESTRAYS.

3338. Publication of description of estrays sold. Disposition of proceeds remaining in state treasury. A full description of estrays for which the proceeds derived from the sale remains in the hands of the treasurer unclaimed shall be published for the period of two consecutive weekly or semi-monthly issues next after May first of each year in not more than four weekly or semi-monthly publications in the state of Montana, said publications to be designated by the state livestock commission, and when such publication shall have been made and the proceeds from the sale of such animals shall have remained in the hands of the state treasurer for a period of two years, it shall be, by the treasurer, upon request of the state livestock commission, at once placed to the credit of the state livestock commission fund.

Amd. Sec. 1, Ch. 63, L. 1927.

For text treatment of this subject see vol. 2 Cal. Jur. 41.

3341. Shipment of estrays—Tally lists—Duty of railroads. Every person, agent, firm, corporation, pool or roundup association, who shall ship cattle from this state to any market where Montana livestock inspectors are maintained, may ship with their own cattle any estrays which may be among them, but they shall, before shipment, or at the time of loading same on the cars for shipment, carefully and as accurately as possible inspect or tally the brand on such cattle, whether their own or estrays, making a list in duplicate, which list shall state the date of loading, name of shipper, description of brands on each animal, number and class of the cattle bearing each brand, destination, name of the commission firm to whom consigned, and the name of the person in charge of the shipment. It shall be the duty of the railroad agent at the point of loading to require from the shipper tallies as described in this act, and to forward, within twenty-four (24) hours after loading, one copy to the livestock commission at Helena, Montana, and another copy to the Montana brand inspector at the point of destination.

Amd. Sec. 1, Ch. 29, L. 1923.

3341.1. Penalty. Every person, agent, firm or corporation violating the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not exceeding three

hundred dollars (\$300), or imprisonment in the county jail not to exceed six (6) months, or both such fine and imprisonment.

En. Sec. 2, Ch. 29, L. 1923.

CHAPTER 242.

INSPECTION OF SLAUGHTERED CATTLE.

3346. Hides of slaughtered cattle to be kept.

Rep. Sec. 8, Ch. 75, L. 1923.

In a prosecution for the larceny of cattle, admission of testimony tending to show that defendant had slaughtered cattle other than those alleged to have been stolen and thus had violated the provisions of this section, in failing to keep

the hides for ten days, was error, under the rule that upon the trial of one accused of crime, evidence of a distinct and separate offense is not admissible. *State v. Broadwater*, 75 Mont. 350, 243 Pac. 587.

3347 to 3350 inclusive. Relating to hides of slaughtered cattle.

Rep. Sec. 8, Ch. 75, L. 1923.

3350.1. Duty of purchasers of hides of cattle—Inspection. Any person, firm or corporation who shall purchase or receive any hides of cattle, shall obtain from the owner thereof, or from his legally authorized agent, at the time of purchasing or receiving the same, a bill of sale in writing, which bill of sale shall recite in full the date of receiving the hide or hides, the name of the person, firm or corporation selling such hides, a description of each hide which shall include the marks and brands on each hide, the weight thereof, and whether the same is dry or green, and shall keep a permanent record of all such purchases. Such records and bills of sale shall be exhibited for examination at any time upon demand of any stock inspector or peace officer of this state. All such hides so purchased shall be submitted for examination and inspection at any time within ten days after purchase, at the purchaser's residence or place of business, upon demand of any stock inspector or peace officer of this state. Any person, firm or corporation who shall fail to comply with the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished as hereinafter provided. It being expressly provided, that purchases of hides may be made in quantities exceeding ten (10) in number, in one purchase, from a seller who is regularly engaged in the slaughter of cattle, at a fixed place of business, who has already complied with the law regulating the slaughter of cattle, without a compliance with the foregoing provision of this section, if the seller shall deliver to the purchaser a copy of the record of the slaughter of the animals from which said hides were taken and none other.

En. Sec. 1, Ch. 61, L. 1923.

3350.2. Penalty for falsifying bill of sale. Any person, firm or corporation selling or disposing of hides in any manner, or any person, firm or corporation purchasing such hides, who shall wilfully or intentionally falsify the bill of sale covering such hides, shall be deemed guilty of a misdemeanor and shall be punished as hereinafter provided.

En. Sec. 2, Ch. 61, L. 1923.

3350.3. Other penalties. Any person, firm or corporation who violates any of the provisions of this act, shall upon conviction thereof, be punished by a fine of not less than twenty-five dollars, nor more than two hundred dollars, or by imprisonment in the county jail, for a period of not less than ten days nor more than sixty days, or by both such fine and imprisonment.

En. Sec. 3, Ch. 61, L. 1923.

3350.4. Mutilation or concealment hides forbidden. Every person who wilfully or maliciously mutilates, destroys, or conceals the hide from any horse, mare, colt, mule, jack, jennet, bull, steer, cow, calf, goat, hop or sheep with intent to or for the purpose of removing evidence of ownership of such hide or the animal from which said hide was removed, is guilty of a felony, and punishable as hereinafter provided.

En. Sec. 1, Ch. 76, L. 1923.

3350.5. Sufficiency of pleading. In any prosecution for the violation of the provisions of this act, it shall not be necessary for the state to allege in the complaint or information or proof, the ownership of the hide, or of the animal from which said hide was removed, but it shall be sufficient to allege in the complaint or information or proof that the owner of said hide or of the animal from which said hide was removed, is unknown and not the property of the defendant.

En. Sec. 2, Ch. 76, L. 1923.

3350.6. Penalty. Any person or persons who violates any of the provisions of this act shall be deemed guilty of a felony, and upon conviction thereof, shall be punished by imprisonment in the state prison for not less than one year nor more than ten years.

En. Sec. 3, Ch. 76, L. 1923.

3350.7. Butchers and meat peddlers defined. Every person, firm, corporation or association who, at a fixed location, slaughters or causes to be slaughtered neat cattle for the purpose of selling or distributing any of the meat or by-products of such cattle in this state, or who at a fixed place of business deals in or sells dressed meats, shall for the purpose of this act be designated as a "butcher." Every other person, firm, corporation or association who slaughters or causes to be slaughtered any neat cattle, or who deals in the selling of dressed meats elsewhere than at a fixed place of business, shall for the purpose of this act be deemed a "meat peddler."

En. Sec. 1, Ch. 121, L. 1927.

3350.8. Licenses. Every butcher shall pay to the county treasurer of each county wherein such butcher sells or distributes any meat or by-products of neat cattle, an annual license of five dollars, payable in advance in the month of January of each year. Every meat peddler shall pay to the county treasurer of each county wherein such peddler sells or distributes any meat or by-products of neat cattle, an annual license of one hundred dollars. This section shall not apply to the sale of meat

by any person, firm, corporation or association who may slaughter or cause to be slaughtered any neat cattle of his own raising. The moneys collected from said license fees shall be placed in the general fund of the county to which they are paid.

En. Sec. 2, Ch. 121, L. 1927.

3350.9. Inspection and stamping of hides. All butchers and meat peddlers shall have the hide in its entirety with ears and tail attached of each beef inspected by a livestock inspector or deputy, or by a sheriff or his deputy, or by any person designated by the board of county commissioners, who shall mark said hide or hides by a hole at least one inch square near the root of the tail, before the beef is peddled, sold or offered for sale by said butcher or peddler, and, upon demand, must produce such hide or inspection certificate as hereinafter provided. The hide shall also be stamped in at least one place on the flesh side with an indelible stamp to be provided by the county, the form of which shall be specified by the livestock commission, which shall correspond to the stamps on the carcass. Each of the four (4) quarters so presented shall also be stamped with an indelible stamp which shall correspond to the stamp on the hide as hereinbefore provided. Said inspector, or sheriff, or authorized inspector, shall keep a record and issue a certificate of inspection on a form provided by the county, which form shall be specified by the livestock commission, giving the peddlers' or butchers' names, place of residence, the number of the stamp, the brand or brands on the hide or hides, the date of inspection, and the place where such inspection was made, and the officer making such inspection shall forward a copy of all inspections made on or before the first day of each month to the secretary of the livestock commission and to the county clerk of his county, which said record of inspection shall be placed on file in the offices aforesaid. When ownership is claimed by a bill of sale, the officer making the inspection shall demand and secure the original bill of sale, which shall be attached to the inspector's report submitted to the livestock commission. When such bills of sale cover cattle not included in the inspection, the inspector shall issue to the holder his receipt, describing the balance of the cattle covered by the original bill of sale. Whenever such hide or hides shall be presented for inspection to an officer as herein provided, the person exhibiting the same shall pay to such officer a fee of ten cents for each hide so exhibited, which fee shall be retained by the officer making such inspection.

Any person who kills beef or veal in good faith for his own use shall not be required to have such meat inspected or stamped, nor shall he be required to procure any license provided for in this act.

En. Sec. 3, Ch. 121, L. 1927.

3350.10. Certificate of inspection. Every person or persons, firm, corporation, or association slaughtering cattle for their own use, must before disposing of the hide or hides from such cattle, have the same inspected by an officer authorized to make such inspections and secure a certificate of inspection as hereinbefore provided for. It shall be unlawful for any person or persons, firm, corporation or association, to sell or

offer for sale any hide or hides from neat cattle which have not been inspected and stamped by an authorized inspector.

En. Sec. 4, Ch. 121, L. 1927.

3350.11. Purchase without inspection unlawful—Exception. It shall be unlawful for any person or persons to purchase the carcass or any part thereof of any beef or veal without first making an examination and inspection for the state or federal inspection stamp. The provisions of this section shall not apply to any person or persons who shall purchase at retail beef or veal in quantities less than one quarter of an animal.

En. Sec. 5, Ch. 121, L. 1927.

3350.12. Forfeiture of license when. In addition to the penalties provided by section 7 of this act, any meat peddler, as defined by this act, who shall violate any of the terms of this act, shall suffer a forfeiture of the license required by this act and no meat peddlers' license shall again be issued to such person until the expiration of one year from the date of such conviction.

En. Sec. 6, Ch. 121, L. 1927.

3350.13. Penalty. Any person or persons who violate any of the provisions of this act, or who wilfully falsifies any of the records required by this act, or who wilfully falsifies any of the records required by this act to be kept, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than \$100 nor more than \$500 or by imprisonment in the county jail for a period of not less than thirty days nor more than six months, or by both such fine and imprisonment for the first offense, and for each subsequent offense shall be deemed guilty of a felony and punished by imprisonment in the state prison for not less than one year nor more than five years.

En. Sec. 7, Ch. 121, L. 1927.

3350.14. Exception. The provisions of this act, excepting section 2, shall not apply to butchers operating under federal inspection.

En. Sec. 8, Ch. 121, L. 1927.

CHAPTER 245.

FENCES—LEGAL FENCE—LIABILITY OF OWNERS OF TRESPASSING STOCK.

3374. Legal fences defined.

The provisions of this and section 3378 have no application to animals in charge of some person. Dorman v. Erie, 63 Mont. 579, 584, 208 Pac. 908. See, also, Linderberg v. Howe, 67 Mont. 195, 215 Pac. 230. Cited in Schreiner v. Deep Creek Stock Assn., 68 Mont. 104, 110, 217 Pac. 663.

3376.1. Certain barbed wire fences nuisance. All barbed wire and other wire fencing which has sagged or fallen to the ground so as to be ineffectual for the purpose of turning stock, and a menace to any person riding or walking over the same is declared to be a public nuisance, and subject to abatement in the manner hereinafter provided.

En. Sec. 1, Ch. 84, L. 1927.

3376.2. Notice to repair—Removal by commissioners. Upon ascertaining the existence in the county of any nuisance specified in the preceding section of this act, the board of county commissioners shall notify by registered mail the owner of such wire, if such owner be known to said board and within the state, to remove same. If such owner shall fail to remove said wire or to rebuild said fence within sixty days following receipt of said notice, the board of county commissioners shall have authority to remove and dispose of said wire in the manner provided by the next section of this act.

En. Sec. 2, Ch. 84, L. 1927.

3376.3. Authority of county commissioners—Disposal of fencing. If there be no known owner of such wire within the state, or if such owner be unknown to the board of county commissioners, said board shall have authority to collect and remove said wire at the expense of the county. All such wire or other fencing as in the opinion of the board of county commissioners can be sold at a price sufficient to cover at least the expense of removal and sale, shall be sold by the county commissioners in the manner now provided by law for the sale of county property, except that notice of such sale need be published only once and need be given only ten days before such sale.

En. Sec. 3, Ch. 84, L. 1927.

3376.4. Disposal of proceeds sale. The proceeds of such sale shall be used to defray the cost of collecting and selling said wire, and the balance, if any, be placed by the county treasurer in a special fund, and shall be held by him subject to claim by any person establishing to the satisfaction of the board of county commissioners that he was the lawful owner of said wire and entitled to the remaining proceeds of such sale. If no person claims said money within one year of the date of sale, the same shall be deposited in the general fund of the county.

En. Sec. 4, Ch. 84, L. 1927.

3378. Liability of owners of stock for trespass.

A lawful fence entirely surrounding his lands is a condition precedent to the right of a land owner to recover damages from owners of livestock trespassing thereon, unless the latter with knowledge of the private ownership of unfenced land, wilfully herds them thereon or drives them to a point so near the

boundaries that they are certain to go upon and feed thereon. *Schreiner v. Deep Creek Stock Assn.*, 68 Mont. 104, 217 Pac. 663. See, also, *Dorman v. Erie*, 63 Mont. 579, 208 Pac. 908.

For text treatment of this subject see vol. 2 Cal. Jur. 37.

3382. Marking. Right of action against trespassing stock. No person owning or possessing agricultural or grazing land, or patented mining claims lying within said national forest reserves of this state or on the public range lying adjoining to any said national forest reserve, the boundaries of which said lands are not marked as required by the provisions of this act, shall have any claim or cause of action or right of action against the owner of sheep, cattle or other livestock under the charge of a herder, for trespass committed by such livestock upon said land, and such shall be the rule regardless of whether the said sheep so trespassing strayed

thereon on their own inclination and without being driven, or whether said sheep were herded or driven on said land; provided, that no person or persons can claim exemption for trespassing under the provisions of this section where such person or persons shall have actual knowledge of the boundary lines of any lands herein referred to; but in no event shall damages other than nominal damages be assessed against said trespass, unless the land owner or his duly authorized agent shall within six months after said trespass has been committed, give said trespasser written notice demanding a sum certain for damages sustained by reason of such trespass.

Amd. Sec. 1, Ch. 78, L. 1927.

CHAPTER 246.

HERD DISTRICTS.

3385. Unlawful for stock to run at large within herd districts. Penalty. Any person who is the owner, or entitled to the possession of any horses, mules, cattle, sheep, or goats, who shall wilfully permit same to run at large within any herd district, shall be guilty of a misdemeanor; and, upon conviction thereof, shall be punished by a fine of not less than one dollar, nor more than five dollars for each offense; and each day that each five head, or less, of such horses, mules, cattle, sheep, or goats, are wilfully permitted to run at large shall constitute a separate offense.

Any person, who is the owner, or entitled to the possession of any bull over one (1) year of age who shall wilfully permit same to run at large within any herd district shall be guilty of a misdemeanor; and, upon conviction thereof, shall be punished by a fine of not less than ten (\$10) dollars, nor more than fifty (\$50) dollars for each offense; and each day that such bull be permitted to run at large shall constitute a separate offense.

Amd. Sec. 1, Ch. 45, L. 1925.

CHAPTER 247.

ANIMALS RUNNING AT LARGE.

3396 to 3400 inclusive. Relating to stud horses and jackasses running at large.

Rep. Sec. 7, Ch. 63, L. 1925.

3400.1. Running at large certain animals prohibited. It shall be unlawful for any owner, or person having the management or control, of any stallion, ridgeling, unaltered male mule, or jackass, over the age of one year, to permit or suffer such animal to run at large on the open range. The term "open range" means all lands in the state of Montana not inclosed by a legal fence; the term "open range" includes all highways outside of private inclosures and used by the public whether or not the same have been formally dedicated to the public.

En. Sec. 1, Ch. 63, L. 1925.

3400.2. Public nuisance. Any such animal so running at large shall be, and it is hereby declared to be, a public nuisance, which, in addition to the means and proceedings prescribed by this act for its abatement and removal, may be abated and removed by the means and proceedings now, or hereafter to be, provided by law for the abatement or removal of public nuisances.

En. Sec. 2, Ch. 63, L. 1925.

3400.3. Procedure for taking up and disposal of animals. Any person may take up and secure any such animal found running at large on the open range. After taking it up he shall, without unnecessary delay, post at the United States postoffice or as near as may be to the place where the animal was taken up, a notice truly dated and subscribed by him, or his agent, to the effect that the animal, describing it by marks and brands (if any), color, and sex, was taken up on the day named while it was running at large on the open range in the county (naming the county) and that unless claimed and removed within five days next after the date of the posting the animal will be castrated at the expense of the owner thereof. Should the owner, or the person having management or control, of such animal be known to the person who took the animal up, personal service of such notice upon the owner or person having management or control of the animal shall be the equivalent to the posting, provided, the notice if personally served may state that unless the animal is claimed and removed within two days next after the date of the notice served personally, the animal will be castrated at the expense of the owner thereof.

If such animal so taken up be not claimed and removed within said five days or said two days, as the case may be, it may lawfully be castrated in the usual manner and doing no more harm than is necessary. The expense of castration shall be paid by the owner. If such animal be claimed within the time herein prescribed, the claimant shall pay to the person who took the animal up, the reasonable expense of the keeping and feed thereof since it was taken up, and also the sum of five dollars for the taking up and giving of the notice aforementioned; upon making such payments the claimant shall immediately remove and take away said animal.

En. Sec. 3, Ch. 63, L. 1925.

3400.4. Animals may be killed when—Notice to owner. If any such animal so running at large cannot, by reasonable effort, be captured, taken up, or corralled, it may lawfully be killed unless the owner, or person having the management or control of it shall take the animal off the open range and restrain it from running at large thereon within ten days next after the giving of notice as hereinafter provided. The notice shall be signed by one or more taxpayers of the vicinity of the range whereon such animal be at large, and be substantially as follows:

“To whom it may concern:

Take notice, that a certain (stallion, ridgeling, unaltered male mule, or jackass, as the case may be) is running at large on the open range (identify the range by general description) in

County, Montana. Unless said animal be removed therefrom and restrained from running at large on open range, within ten days next after the date of this notice, it will be killed.

(Date)

(Signature or Signatures.)”

The notice shall be posted at the postoffice nearest the place where the animal was last seen on the range, and like notices in two other of the most public places in the vicinity of said range, and like notice shall at once be mailed to the owner or person having management or control of the animal, if his name and address be known.

En. Sec. 4, Ch. 63, L. 1925.

3400.5. No limitation on right to kill animals when. This act is not intended, and it shall not be interpreted or understood, to limit or deny the right now existing to destroy or kill any such animal to prevent injury by it to any person or property.

En. Sec. 5, Ch. 63, L. 1925.

3400.6. Effect partial invalidity act. If any provision of this act, or the application thereof to any person or circumstances, be held invalid or inoperative, the remainder of the act, and the application of such provision to other persons and circumstances, shall not be affected thereby.

En. Sec. 6, Ch. 63, L. 1925.

3403. Regulation running at large of bulls. It shall be unlawful for any person or persons, firm, company, or corporation to turn upon, or allow to run at large on the public highways, open range, or national forest reserve within the state of Montana any bull other than a pure-bred bull of a recognized beef type; and no bull shall be turned upon, or allowed to run at large upon any such public highways, open range or national forest reserve between January 1st and July 1st of each and every year.

Amd. Sec. 1, Ch. 53, L. 1925.

CHAPTER 248.

BOUNTIES FOR KILLING WILD ANIMALS.

3407. Bounties for wolves, coyotes and mountain lions.

Rep. Sec. 5, Ch. 73, L. 1923.

3407.1. Bounties on wolves, coyotes, and mountain lions. There shall be paid from the bounty funds of the state for the killing of wild animals inimical to the stock industry or to game, the following bounties, where such animals are killed between April first and July first inclusive: for each grown wolf, fifteen dollars; for each grown coyote or for each coyote pup or wolf pup, two dollars; for each mountain lion, twenty dollars.

En. Sec. 1, Ch. 109, L. 1925.

For text treatment of this subject see vol. 4 Cal. Jur. 451.

3407.2. Claimant shall exhibit skin: Any person killing any of the aforesaid animals, except mountain lions, to obtain bounty thereon, shall, within thirty days of the date of the killing, exhibit the entire skin or skins of the said animal or animals, including the entire head with ears, the tail, and all four (4) paws to the bounty inspector nearest to the locality in which the animal or animals were killed, and shall, at the same time file with the bounty inspector, as hereinafter provided, an affidavit setting forth that he killed the animal or animals from which the skin or skins were taken; that the same was killed nearer to, or if more than one hide is presented, that the greater number were killed nearer to the residence of the said bounty inspector to which the same was presented, than to any other bounty inspector, and also state the county or counties in which said animals were killed; and every bounty inspector appointed under the provisions of this act shall be empowered to administer oaths to any and all persons making any affidavit as aforesaid; provided, however, that any person killing any mountain lion, to obtain bounty thereon, shall present the same to a bounty inspector as provided in this section for wolves and coyotes, except that in addition to the requirements of this section the skins of mountain lions shall also contain the entire skin of the lower jaw, which shall be severed by the bounty inspector and thereafter treated in the same manner as scalps of wolves and coyotes herein provided.

En. Sec. 2, Ch. 109, L. 1925.

3407.3. Sheriff and deputies to act as bounty inspectors—Claim for bounties. It shall be the duty of the sheriff of any county in this state, and of all under-sheriffs and deputy sheriffs located at the county seat, but not elsewhere, to receive and examine all skins and pelts presented for bounty within their respective counties; the said sheriff shall receive ten cents for each skin examined, said amount to be paid by the owner of the skin. Each sheriff, under-sheriff, and deputy sheriff, to prevent fraud, shall minutely examine each skin presented, and should such examination disclose that the scalp and ears with the skin from the entire head of such animal or animals have not been severed, punched, patched, or in any manner marked, he shall, there in the presence of the person presenting such skin, mark such skin by severing the skin from the head, including the ears, and then redeliver the skin or skins to the person presenting the same, and shall require the following affidavit from the claimant:

Bounty Claim.

State of Montana	} ss.
County of	

Affidavit of Claimant.

....., whose postoffice address is, being first duly sworn, deposes and says: That he killed or caused to be killed the animal from which the skin now here presented to, the sheriff or deputy sheriff in and for the said county of, was taken; that such an animal

was killed within the bounds of the county of within the thirty days last past, and that the same or the greater number of them were killed nearer to the residence of said sheriff or deputy sheriff than to the residence of any other sheriff; that his claim is made for bounty pursuant to law for (.....) and (.....) actually killed or caused to be killed by affiant aforesaid; and that all blanks in this affidavit have been filled out by the affiant in his own handwriting, or that because of affiant's inability to write, such blanks were filled out by, a person other than the sheriff or deputy sheriff, at the request of said affiant; and that such person so acting for affiant, in filling out the blanks has signed his name hereto at the affiant's request, below the name of the affiant, for the purpose of identification of this affidavit, as by law required.

.....
 Subscribed and sworn to before me this day of
 192.....

.....
 Sheriff, County,
 Montana.

And shall require affidavits from two resident taxpayers residing in the vicinity in which such animal or animals were killed, setting forth that they are resident taxpayers on livestock, giving their postoffice addresses and stating that they are personally acquainted with the person presenting the skin or skins, and to their knowledge, information, and belief, said person did kill or cause to be killed the animal or animals from which the skin or skins were taken within thirty days preceding the offering of such skin for a bounty to the sheriff, under-sheriff, or deputy sheriff to which the same is presented; and he shall at the same time make out and deliver to said person a certificate addressed to the county clerk of his county, and immediately deliver to said county clerk a duplicate thereof, showing the date, number, and kind of skins so marked for severing, and the name of the person presenting the same; also the fact of the filing of the affidavits of taxpayers heretofore required and the examination made as required, and said certificate shall be duly signed by him in his official capacity; provided, that when any doubt shall exist as to the kind of skin or skins presented, whether wolf or coyote, the certificate shall be issued for the lesser bounty; and each sheriff shall keep a record in a bound book of all the skins so marked and severed, showing the date, number, and kinds and the names of the persons presenting the same, which book shall be a book of official record. Neither the sheriff, under-sheriff, nor deputy sheriff shall perform any duties under the provisions of this act except at the county seat.

Wilfully making a false certificate or affidavit in any material portion thereof by any taxpayer as herein provided shall be a felony, punishable the same as a crime of perjury. The sheriff shall, not later than the fifteenth of each month, render to the county clerk and recorder a report setting forth the names of the persons presenting skins, with the number of the certificate, the kind and number of the skins so presented,

as to each and every certificate which he has issued during said month. The county clerk shall, upon the receipt of each said certificate, file the same in the order in which they are received, and safely keep them until the arrival of the skin or skins mentioned in such certificate; and upon the receipt of said skin or skins he shall call to his assistance either the county treasurer or in his absence, the clerk of the district court, who, being present, shall both, in order to prevent fraud, minutely examine each scalp; and should such examination disclose that the scalps, as heretofore [heretofore] specified, of such animal or animals, agree with the number and kind of scalps or lower jaw of mountain lion mentioned in the said certificate, the county clerk shall thereupon, in the presence of said treasurer or clerk of the district court, destroy said scalps, by fire; and said county clerk shall then make out and deliver to the person named in said certificate a second certificate showing the statement of the facts as contained in the certificate to the sheriff, under-sheriff, or deputy sheriff, with the additional statement of the examination so made by him, and that he found said scalps to agree with the number and kind mentioned in the certificate of said sheriff, under-sheriff, or deputy sheriff, and so stated there in said certificate. In no case should a bounty certificate be issued by the county clerk for more scalps than are actually received and counted by him; and the county clerk shall receive for each scalp, or mountain lion lower jaw, accounted for by him, the sum of five cents, to be paid quarterly by the state treasurer out of the bounty fund. The county clerk shall keep a record, in a bound book of all certificates so received and issued, showing the date and description of the number and kind of hides, and the names of the persons presenting the same, which book shall be an official record. County clerks are required to send a report and statement to the livestock commission on or before the twentieth of each month.

En. Sec. 3, Ch. 109, L. 1925.

3407.4. Bounty claims and certificates to be filed with livestock commission. All bounty claims and certificates issued by the county clerks and recorders of the several counties of this state under the provisions of section 3 of this act shall be filed in the office of the livestock commission and registered in a book provided for that purpose.

En. Sec. 4, Ch. 109, L. 1925.

3407.5. Investigation and indorsement of bounty claims and certificates—Notice of disapproval. It shall be the duty of the livestock commission to examine into and investigate every such bounty claim and certificate filed with such commission, and in making such examination and investigation, the commission may require the holder of any such certificate or claim to furnish the commission with such additional evidence or proof with reference thereto as the commission may deem necessary and proper, and such evidence may be either oral or documentary as required by the commission. The livestock commission shall, after making such examination and investigation, indorse on such certificate or claim its approval or disapproval thereof, and if the same or any part thereof be disapproved, such indorsement shall state the reasons

for such disapproval. If any such certificate or claim be disapproved by the commission, either in whole or in part, the commission shall immediately notify the holder thereof of the action of the commission and of the reasons therefor, and the date when said certificate or claim will be presented to the state board of examiners for its action thereon.

En. Sec. 5, Ch. 109, L. 1925.

3407.6. Delivery of claims and certificates to board of examiners. The livestock commission shall, after such examination and investigation has been completed and the proper indorsement has been made on such certificate or claim, deliver the same to the state board of examiners for allowance or disallowance.

En. Sec. 6, Ch. 109, L. 1925.

3407.7. Indorsement by board of examiners—Warrants. If the state board of examiners approve and allow any such certificate or claim, they must indorse thereon over their signatures, "Approved for the sum of dollars" and transmit the same to the office of the state auditor, and the auditor must draw his warrant on the state bounty fund for the amount so approved or allowed, in favor of the claimant, or his assigns, in the order in which the same is approved.

En. Sec. 7, Ch. 109, L. 1925.

3407.8. Application of surplus funds. If, at the end of any bounty paying season, there shall be a surplus in the state bounty fund, such surplus may be used to hire salaried hunters and trappers to hunt and trap predatory animals and to purchase and supply poison to be used for a poison campaign on predatory animals.

All furs, skins and specimens, taken by hunters or trappers, whose salaries may be paid in whole or in part out of the fund herein created, shall be sold by the livestock commission, and the proceeds from such sales shall be credited to the bounty fund, the same to be used in the further carrying out of the provisions of this act, provided that any specimens so taken may be presented, free of charge to any state museum or institution.

En. Sec. 8, Ch. 109, L. 1925.

3407.9. Perjury and forgery—Penalty. Any person who shall falsely make, alter, forge, or counterfeit any of said certificates or orders shall be deemed guilty of forgery, and any person who shall falsely swear to any affidavit provided for by this act, or procure the same to be done by another, with the intent of obtaining any one of said certificates or orders, shall be deemed guilty of perjury, and any person convicted of any of the offenses declared in this section shall be punished by imprisonment in the state prison for a term of not less than one year nor more than ten years.

En. Sec. 9, Ch. 109, L. 1925.

3407.10. Bounty fund—Tax levy. There is hereby created a fund to be known as the "bounty fund." The tax commission, or the depart-

ment of state whose duty it is to fix tax levies, shall annually prescribe the levy recommended by the livestock commission to be made against livestock of all classes, for the purpose of paying for the destruction of wild animals killed within the state, which tax in any one year shall not exceed one and one-half ($1\frac{1}{2}$) mills on a dollar upon the assessed valuation of such livestock, and such moneys so received shall be used and applied only to the payment of claims for the destruction of wild animals and to the administration of the provisions of this act, approved by the livestock commission, and the moneys received for the taxes so levied shall be transmitted annually with other taxes for state purposes to the state treasurer by the county treasurer of each county, and when received by the state treasurer shall be placed to the credit of the bounty fund, and such moneys shall thereafter be paid out on claims approved as aforesaid, duly and regularly presented to the state board of examiners, in accordance with the law governing the payment of claims allowed by said board, and all moneys in said fund are hereby appropriated for such purposes.

En. Sec. 10, Ch. 109, L. 1925.

3407.11. Penalty for fraudulent claims. Any person or persons who shall patch up any skin or scalp, or who shall present any punched or patched skin or scalp, or who shall bring in any skin or skins from other states or territory, with the intent to obtain the bounty on the same fraudulently, or any officer who shall sign any certificate herein provided for without first counting the skins and examining the same to determine the kind of skins, and to see that the skin from the scalp or head is properly severed and preserved as hereinbefore provided or shall evade or violate any provision of any law of the state of Montana relative to bounties or bounty claims, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be punished by a fine not exceeding one thousand dollars, or by imprisonment in the county jail not exceeding one year, or by both such fine, and imprisonment, and that two-thirds of the fine, if the same be collected, or can be collected, shall be given to the informer, and the balance be converted into the state bounty fund.

En. Sec. 11, Ch. 109, L. 1925.

3408 to 3413, inclusive.

3415 to 3417, inclusive.

Relating to bounties on wild animals.

Rep. Sec. 5, Ch. 73, L. 1923.

3417.1. Wild animals defined. For the purpose of this act the term "wild animal" shall include wolf, wolverine, coyote, mountain lion, lynx, bobcat, and any other animal causing depredations upon livestock.

En. Sec. 1, Ch. 73, L. 1923.

3417.2. Livestock commission to supervise destruction. The destruction of wild animals shall be conducted under the supervision of the livestock commission, which shall make rules and regulations respecting

the same and arrange for the carrying out of the provisions of this act, and said commission is hereby authorized to co-operate with the authorized representatives of the United States Biological Survey for the systematic destruction of said wild animals by hunting, trapping and poisoning operations. Further to increase the destruction of wild animals, the livestock commission may also enter into co-operative agreement with state departments, counties, associations, corporations and individuals.

En. Sec. 2, Ch. 73, L. 1923.

3417.3. Skins, how disposed of. All furs, skins and specimens, taken by hunters or trappers, whose salaries may be paid in whole or in part out of the fund herein created, shall be sold by the livestock commission, and the proceeds from such sales shall be credited to the bounty fund, the same to be used in the further carrying out of the provisions of this act, provided that any specimens so taken may be presented, free of charge to any state museum or institution.

En. Sec. 3, Ch. 73, L. 1923.

CHAPTER 252.

REGULATION OF COAL-MINING INDUSTRY.

3469, 3470, 3471. Relating to examination of applicants for coal mine foreman.

Rep. Sec. 1, Ch. 142, L. 1923.

3477. Compensation of examining board.

Rep. Sec. 1, Ch. 142, L. 1923.

3504. Cross-cuts and brattices for ventilation. Cross-cuts between the entries, except where the same are within the confines of shaft bottom pillars, or are hereafter provided for, shall be made not exceeding sixty (60) feet apart, unless sufficient brattice is used to keep the air current up to the entry face, in which case they shall not exceed one hundred (100) feet apart. Where entries or rooms are being driven by entry driving machines, or any other mechanical loading device, or where local mechanical methods of ventilation are installed to furnish air to the workmen at the face, cross-cuts may be driven at not exceeding three hundred (300) feet apart, provided that brattice, tubing or some other device is used sufficient to give at the face twice the amount of air per man and animal provided for in section 3501, Revised Codes of Montana of 1921, and to clear said face of powder smoke before the men are required to return to work therein. In mines or sections of a mine where no local mechanical methods of ventilation are installed, when there is a solid block on one side of a room, cross-cuts shall be made between such room and the adjacent room not to exceed sixty (60) feet apart; where there is a breast or group of rooms, a cross-cut shall be made on one side or the other of each room, except the room adjoining said block, not to exceed fifty (50) feet from the outside corner of the cross-cut to the nearest corner of the entrance of the room, and on the opposite side of the same room a cross-cut shall be

made not to exceed ninety (90) feet from the outside corner of the cross-cut to the nearest corner of the entrance of the room, and thereafter cross-cuts shall be made not to exceed eighty (80) feet apart on each side of the room. The required air current shall be conducted to the cross-cut nearest the face of each entry or room.

Brattices between permanent inlet and outlet airways shall hereafter be constructed in a substantial manner of brick, blocks, masonry, concrete, or nonperishable material. Rooms must not be worked in advance of the ventilating current.

Amd. Sec. 1, Ch. 28, L. 1927.

3524. System of blasting. A workman who is about to explode a blast with a squib shall not shorten the match, saturate it with oil, or ignite it except at the extreme end. He shall see that all persons are out of danger from probable effects of such shots, and shall take measures to prevent anyone from approaching by shouting "Fire" immediately before lighting the fuse or squib.

When firing shots in close proximity to other workmen on rib or in cross-cut driven for air or other purposes, he or they, firing such shots, shall notify in person or by signals the workmen in adjoining rooms or other place or entry.

When a squib is used and a shot misses fire, no person shall return until five minutes shall have elapsed. When a fuse is used and a shot misses fire, no person shall return until one hour for each foot of fuse used shall have elapsed. When it is necessary to tamp dynamite, nothing but a wooden tamper shall be used.

No hole shall be drilled to a greater depth than the cut or shearing, neither shall fine coal, coal dust, or any combustible material be used for tamping any hole.

No workman shall put off any blast in any mine known as a "following shot."

At all coal mines where the coal is loaded by hand by individual miners or loaders the firing of shots shall be restricted to a specific time at the end of each shift, except that in entries, slants and room necks, when necessary, one snubbing shot may be fired in each at the middle of the shift. No miner shall fire a shot until the time appointed for him to do so, and then only in such rotation as designated by the proper authority. After each blast he shall exercise great care in examining the roof and coal and shall secure them safely before beginning to load coal. Where shooting is done by shift work the same precaution shall be used by some person or persons designated by the operator.

In any coal mine, or any section of a coal mine, where the coal is loaded out by any mechanical means, conveyor, power shovel, entry driving machine, scraper loader or other loading device, or where new methods of mining are being developed that require shooting more than once per shift, the firing of shots may take place at any time during the shift, when necessary, after proper inspection by competent men as may be designated by the operator, provided that efficient means are employed to carry the powder smoke as directly and as quickly as possible to the return airway and also that the workmen are not required to work in a smoky atmosphere.

When draw slate is over the coal, the miner shall not go underneath the draw slate until it is made safe from falling by securely posting it, and he shall not remove the posts until the coal is removed and he is ready to take down the draw slate. He shall not place in the gob or refuse pile any fine coal or coal dust but shall load same into cars. When more than one shot is to be fired at the same time with fuse, in the same working place, different lengths of fuse shall be used so as to prevent any possibility of the shots going off simultaneously.

Amd. Sec. 1, Ch. 27, L. 1927.

CHAPTER 252A.

REGULATION OF SALE OF COAL.

3546.1. Coal dealers to accurately invoice coal. Any person, firm or corporation engaged in mining, producing or shipping of coal within the state of Montana, shall accurately bill and invoice the same, plainly indicating on all bills or invoices therefor the place where the same was mined, the person, firm or corporation by whom the same was mined and the trade name or mark, if any, thereof.

En. Sec. 1, Ch. 104, L. 1927.

3546.2. Dealers' requirements. Any person, firm or corporation wholesaling, jobbing, exchanging, offering for sale, or selling at retail, any coal within the state of Montana shall accurately bill and invoice the same to the person, firm or corporation purchasing or receiving the same and shall plainly indicate on all statements, bills or invoices, therefor, the name of the coal, the name of the person, firm or corporation producing the same, the place where mined and the trade name or trademark, if any, thereof.

En. Sec. 2, Ch. 104, L. 1927.

3546.3. Full weight and kind of coal. In the sales of coal within the state of Montana, the seller must give to the purchaser full weight at the rate of two thousand (2,000) pounds per ton, and no person, firm or corporation shall deliver to any customer any coal in substitution for the kind, brand or character of coal ordered by the customer except upon the express written order, direction or approval of the purchaser.

En. Sec. 3, Ch. 104, L. 1927.

3546.4. Copies of invoices to be kept for inspection. Any person, firm, or corporation, mining, shipping, or producing coal, and all persons, firms or corporations wholesaling, jobbing, exchanging, offering for sale or selling at retail any coal within the state of Montana, shall keep within the state of Montana, a true, accurate and complete copy of all the original statements, bills and invoices of all coal produced, shipped, marketed, exchanged or sold for at least one (1) year; and all papers, records and files of any person, firm or corporation transporting, producing, shipping, exchanging or selling any coal within the state of Montana shall, at all times, be open to inspection by the attorney general, the

county attorneys and the state sealer of weights and measures for the purposes of enforcing this act.

En. Sec. 4, Ch. 104, L. 1927.

3546.5. Penalty. Every person, firm or corporation violating any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than twenty-five dollars (\$25), nor more than five hundred dollars (\$500), or by imprisonment in the county jail for not more than ninety (90) days, or by both such fine and imprisonment. Any person, firm or corporation convicted of a second violation of any of the provisions of this act shall be punished as above provided, and the license of any retail coal dealer shall, thereby, be automatically revoked, and it shall be unlawful for any person, firm or corporation, so convicted, thereafter to engage in said retail business, either directly or indirectly, for a period of six (6) months next after such second conviction.

En. Sec. 5, Ch. 104, L. 1927.

3546.6. Enforcement of act. It shall be the duty of the state sealer of weights and measures to enforce the provisions of this act and the duty of the attorney general and the county attorneys of the counties of the state to prosecute all cases arising under the provisions hereof.

En. Sec. 6, Ch. 104, L. 1927.

CHAPTER 253.

REGULATION OF PRODUCTION OF OIL AND GAS.

3547. Incasing of oil and gas wells.

Rep. Sec. 5, Ch. 56, L. 1925.

3547.1. Promulgation rules governing production oil and gas. For the purpose of conserving the natural resources of the state and to prevent waste thereof through negligent methods of operation, the board of railroad commissioners of the state of Montana shall prescribe and enforce rules and regulations governing the drilling, casing, and abandonment of oil and gas wells and the waste of oil and gas therefrom upon all lands in the state of Montana excepting public lands subject to the act of congress approved February 25, 1920 (Public 146). The rules and regulations so prescribed shall be those from time to time adopted by the bureau of mines or by the secretary of the interior of the United States pursuant to said act of congress, governing methods of operations of operators upon lands embraced within permits or leases issued under the provisions of said act of congress, and it shall be the duty of all persons and corporations drilling or operating oil or gas wells upon patented or state land to comply with the said rules and regulations, to file with the board of railroad commissioners of the state of Montana, all logs of wells and other reports required thereby, and to case, control and plug all wells as therein prescribed.

When the rules and regulations aforesaid are duly adopted by and promulgated by said board of railroad commissioners, the same shall be and all amendments and supplements thereto, made in the first instance

by the said bureau of mines, and thereafter adopted by and promulgated by the said board of railroad commissioners, shall be the rules and regulations of and by the authority of the state of Montana; acting through said board of railway commissioners.

En. Sec. 1, Ch. 56, L. 1925.

3547.2. Railroad commissioners to administer act. The board of railroad commissioners may, from time to time, request the aid and assistance of a qualified representative of the bureau of mines of the United States to supervise the abandonment of wells or the extinguishment of fires, and it may, from time to time request the field superintendent of any company or any operator, operating in the same field to aid in the supervision of the abandonment of wells or the extinguishment of fires and in taking effective measures properly to accomplish said purposes, but no such persons shall receive from the state of Montana any compensation for or on account of such services. This act shall be administered by said board of railroad commissioners by and through its engineer or engineers, and its inspector or inspectors, without any cost and expense to the state of Montana in addition to the regular biennial appropriation made for said board and its ex-officio commissions.

En. Sec. 2, Ch. 56, L. 1925.

3547.3. Penalties. Any person or corporation violating the provisions of this act, or rules and regulations prescribed pursuant hereto, or the lawful orders of the board of railroad commissioners under said rules and regulations shall, upon conviction be fined not more than five hundred dollars or imprisoned not more than six months.

En. Sec. 3, Ch. 56, L. 1925.

3547.4. Oil and gas wells not public utilities. That nothing herein contained shall in any manner be construed as constituting or attempting to constitute oil or gas wells as a public utility or utilities.

En. Sec. 4, Ch. 56, L. 1925.

3548. Filling and plugging of wells to be abandoned.

Rep. Sec. 5, Ch. 56, L. 1925.

3550. Wasteful use of natural gas prohibited.

Sections 3550-3552, prohibiting the use of natural gas from purposes or domestic purposes, are unconstitutional as depriving the owner of his property without due process of law. *Gas Products Co. v. Rankin*, 63 Mont. 372, 24 A. L. R. 294, 207 Pac. 993.

3553. Owners abandoned oil wells to file statements.

3554. Penalty for violation of act.

Rep. Sec. 5, Ch. 56, L. 1925.

CHAPTER 254.

THE DEPARTMENT OF AGRICULTURE—REGULATION OF FARMING AND DAIRYING—TESTING SCALES AND REGULATION OF WAREHOUSEMEN.

3566.1. Requiring the registration of all colonies of honey-bees. Every person, firm or corporation in the state of Montana who shall possess or own therein one or more colonies of honey-bees, or one or more hives containing honeycombs or brood combs, but no bees, whether or not such combs contain honey or brood, shall on or before the first day of April of each year, or thereafter within ten days after coming into possession or ownership of such colonies of bees or beehives with combs, but without bees, or within ten days after changing the location thereof, register the same in the office of the commissioner of agriculture at Helena and obtain a registration certificate, which shall entitle him to own, possess or control colonies of bees for the calendar year then current or remainder thereof, at the location or locations named in the registration certificate. Application for such registration of colonies of honey-bees shall be made to the commissioner of agriculture upon blanks prepared by him for this purpose, which shall be distributed by him to those applying for them throughout the state. Such blanks shall contain a statement of the name, place of residence and place of business of the owner and applicant, together with the number of colonies of bees or beehives containing combs but no bees, to be registered and their location or locations in the state, defining such location by lot and block if within the corporate limit of a city or by section, or sectional division to the nearest quarter-section, and township and range, and stating also the name of owner, renter or occupant of the land whereupon such colonies or hives are located.

En. Sec. 1, Ch. 181, L. 1925.

3566.2. Requiring the posting of registration certificates. Every person, firm or corporation in the state of Montana who shall possess or own one or more colonies of bees of one or more beehives containing honeycombs or brood combs, but no bees, whether or not such combs contain honey or brood, shall be and hereby is required to post in a conspicuous place at or near the location of his colonies of honey-bees or beehives, a copy of the registration certificate provided for in section 1 of this act, duly signed by the commissioner of agriculture or his authorized deputy. Every person, firm or corporation in the state of Montana who shall possess or own therein more than one beeyard or location where colonies or beehives are kept, shall post in a conspicuous place a duly signed registration certificate in each and every such beeyard or location.

En. Sec. 2, Ch. 181, L. 1925.

3566.3. Providing for a registration fee. The state commissioner of agriculture, either himself or through his deputy, is authorized and required to collect a registration fee in accordance with the following schedule of fees for the total number of colonies owned or possessed by each person, firm or corporation in the state of Montana:

1 to 10 colonies of bees.....	\$ 1.00
11 to 50 colonies	2.50
51 to 200 colonies	5.00
201 to 300 colonies	7.50
301 to 400 colonies	10.00
401 colonies and upward.....	15.00

En. Sec. 3, Ch. 181, L. 1925.

3566.4. Authorizing the expenditure of funds arising from registration fees. All registration fees collected under the provisions of this act shall be transmitted by the commissioner of agriculture to the state treasurer, but shall constitute a special fund to be known as the "state bee keepers fund" that may be drawn upon from time to time by the state commissioner of agriculture to defray the expenses of the enforcement of the state laws of Montana concerning the business of bee keeping and especially section 3566 of the Revised Codes of Montana of 1921. The fund accruing from registration fees and made available for the enforcement of laws concerning the business of bee keeping in Montana shall be all of the money which the secretary of agriculture, or his deputies, shall spend for the enforcement of this act.

En. Sec. 4, Ch. 181, L. 1925.

3566.5. Providing penalties for violation of this act. Any person, firm or corporation failing, neglecting or refusing to register his bees or beehives containing combs, with or without bees, whether or not such combs contain honey or brood, shall be deemed guilty of a misdemeanor and punished by a fine of not to exceed twenty-five (\$25) dollars for the first offense and fifty (\$50) dollars for any later offense.

En. Sec. 5, Ch. 181, L. 1925.

3568. Division of farming and dairying—Powers and duties. The department of agriculture, labor and industry through the division of farming and dairying shall have general regulation of the industry of dairying in the state of Montana save and except the sanitary inspection of dairies, milk plants, condensed milk factories, and powdered milk factories. The regulation and sanitary inspection of all creameries, butter and cheese factories, ice-cream factories and cream receiving stations, shall be the duty of the state department of agriculture, labor and industry. The sanitary inspection of dairies, milk plants, condensed milk factories and powdered milk factories, shall be administered by the state livestock sanitary board.

Regulation of standards. It shall be the duty of the department of agriculture, labor and industry to enforce the laws regulating the standards of all dairy products, except whole milk, skimmed milk, condensed or evaporated milk and powdered milk, whether made from whole milk or skimmed milk. The regulation of the standards of whole milk, skimmed milk, evaporated or condensed milk, and powdered milk as mentioned herewith, shall be the duty of the livestock sanitary board. For the purpose of this act, the following definitions shall be adopted.

Butter is the clean, nonrancid product made by gathering in any manner the fat of fresh ripened milk or cream into a mass, which also

contains a small portion of the other milk constituents, with or without salt, and contains not less than eighty per cent (80%) of milk fat and not more than fifteen per cent (15%) water. Butter may also contain added coloring matter.

Renovated butter or process butter is the product made by melting butter and reworking, without the addition or use of chemicals, or any substance except whole milk, cream or salt, and contains not more than sixteen (16%) per cent of water and at least eighty (80%) per cent of milk fat.

Cheese is the sound, solid, and ripened product made from milk or cream by coagulating the casein thereof with rennet or lactic acid, with or without the addition of ripened ferments and seasoning and contains, in the water-free substance, not less than fifty (50%) per cent of milk fat. Cheese may also contain added coloring matter.

Skimmed milk cheese is the sound, solid, and ripened product made from skim milk by coagulating the casein thereof with rennet or lactic acid, with or without the addition of ripening ferments and seasoning.

(a) **Ice-cream** is a frozen product made from pure cream and sugar, with or without a natural flavoring and pure gelatine and contains not less than ten (10%) per cent of milk fat.

(b) **Fruit ice-cream** is a frozen product made from cream, sugar, and sound, clean, mature fruits, and contains not less than nine (9%) per cent of milk fat.

(c) **Nut ice-cream** is a frozen product made from cream, sugar and sound, nonrancid nuts and contains not less than nine (9%) per cent of milk fat.

(d) All ice-creams shall contain not less than thirty-three per cent (33%) of total solids and shall not contain to exceed one per cent (1%) of gelatine.

Samples of dairy products, tests and payment for same. It shall be the duty of the department of agriculture, labor and industry, to provide suitable means for the taking of samples of dairy products and of all imitations thereof suspected of being made or sold in violation of the law, and to analyze or test the same and the commissioner of agriculture may require the state chemist to test and analyze said samples. When samples of dairy products are taken in accordance with any of the provisions of the laws of Montana the agent taking the same, must pay, or offer to pay for them at their full value. If payment is accepted, the agent must obtain a receipt from the person or persons from whom the samples are obtained. The records of such samples and their analysis and test, when identified as to the samples by the oath of the officer taking the same, and verified as to the sample by the oath of the officer taking the same, and verified as to the analysis or test, by the oath of such chemist making the same, shall be prima facie evidence of the facts therein set forth, when offered in evidence in any prosecution or action at law or in equity for violation of the provisions of this act, or any rule, regulation or order of said department of agriculture, labor and industry made in pursuance to this act.

Compilation of statistics and extension work. It shall be the duty of the department of agriculture, labor and industry to compile and publish statistics concerning all phases of the dairy industry in the state, and to encourage and advertise said industry in every possible manner; to carry on a campaign of education in conjunction with the extension work of the College of Agriculture and Mechanic Arts of Montana for the purpose of encouraging interest in the dairy industry and of furnishing scientific and practical information concerning same.

Amd. Sec. 7, Ch. 35, L. 1923.

3569. Registry of location of dairy product factories. It shall be the duty of every cheese factory, creamery, butter factory, skimming station or cream buying station in the state, where milk or cream is purchased or contributed by three or more persons for the purpose of manufacture into butter, cheese, cottage cheese or ice-cream, or for shipment to any place or places where said milk or cream may be made into the dairy products named herewith, to register the location of such cheese factory, creamery, butter factory, skimming station or cream buying station, and the name of its owner or manager, with the commissioner of agriculture on or before the first day of April of each year. Before the organization of any new factory, notice shall be given at once to said commissioner of agriculture.

Licensing of creameries. It shall be unlawful for any person, firm or corporation to conduct any creamery, milk or cream receiving station, butter factory, cheese factory, or ice-cream factory, without first securing a license from the state department of agriculture, labor and industry to operate the same. Such license shall expire on the last day of December of the current year in which it is issued; provided, however, that said license may be revoked by the commissioner of agriculture whenever the holder thereof shall fail to comply with the laws of the state of Montana or to conduct such establishment in an orderly or sanitary manner. It is further provided that all licenses which have been issued by the livestock sanitary board to creameries, milk or cream receiving stations, butter factories, cheese factories or ice-cream factories, shall remain in full force and effect for the full period for which they were issued, unless revoked by the commissioner of agriculture, labor and industry for failure to comply with the laws of the state of Montana, or to conduct their business in a sanitary or orderly manner.

License fees. The following schedule of license fees shall be charged for all licenses issued by the department of agriculture, labor and industry under the provisions of this act.

Cream buying and shipping stations \$5.

Creameries and cheese factories making less than 100,000 lbs. \$5.

Those making more than 100,000 and less than 200,000 lbs. \$10.

Those making more than 200,000 and less than 300,000 lbs. \$15.

Those making more than 300,000 and less than 400,000 lbs. \$20.

Those making more than 400,000 and less than 500,000 lbs. \$25.

Those making more than 500,000 and less than 600,000 lbs. \$30.

Those making more than 600,000 and less than 700,000 lbs. \$35.

Those making more than 700,000 and less than 800,000 lbs. \$40.

Those making more than 800,000 and less than 900,000 lbs. \$45.

Those making more than 900,000 lbs. \$50.

Ice-cream factories making less than 10,000 gallons \$5.

Those making 10,000 gallons and less than 20,000 gallons \$10.

Those making 20,000 gallons and less than 30,000 gallons \$15.

Those making 30,000 gallons and less than 40,000 gallons \$20.

Those making 40,000 gallons or over \$25.

For the purpose of this act, the following definitions shall be adopted:

A creamery shall be defined as a place where the milk or cream furnished by three or more persons, selling the same independently of each other, is used for manufacture into butter for commercial purposes.

A cheese factory shall be defined as a place where milk furnished by three or more persons, each selling the same independently of the others, is made into cheese for commercial purposes.

An ice-cream factory shall be defined as any place where ice-cream is made for sale, where the minimum output is two hundred gallons per annum, or where it is made for thirty days or more in each year.

Reports of factories. It shall likewise be the duty of each and all of the establishments in this section named, to render to the commissioner of agriculture, within the first three days after the last day of each quarterly period, a full report of the amount of butter, cheese, ice-cream, or other dairy products handled or manufactured during the preceding three months. The first quarter of any year shall begin with the first day of the year.

Amd. Sec. 8, Ch. 35, L. 1923.

[See note to the following section.]

3569.1. License of cream buying and collecting stations. Hereafter all milk or cream buying or collecting stations shall pay an annual license fee of five dollars (\$5) for all stations handling less than fifteen hundred (1,500) pounds of butter fat per month; ten dollars (\$10) for all stations handling fifteen hundred (1,500) pounds and less than three thousand (3,000) pounds; fifteen dollars (\$15) per month for all stations handling three thousand (3,000) pounds and less than six thousand (6,000) pounds; twenty dollars (\$20) for all stations handling six thousand (6,000) pounds and over.

En. Sec. 1, Ch. 142, L. 1927.

[NOTE.—The title of the above chapter states that it amends section 3569, Revised Codes of 1921, as amended by chapter 35, L. 1923. The body of the act, however, contains no reference to the above section and it is doubtful whether this section does more than to amend by implication the schedule of license fees contained in section 3569.]

3569.2. Regulation of rooms—Boilers. The room in which any milk or cream buying or collection station shall hereafter be operated in this state shall contain floor space large enough for all equipment in said station, including cooling tank of sufficient size to hold all cream bought or collected at such station on each day.

All such stations collecting more than fifteen hundred (1,500) pounds of butter fat per month shall be equipped with a steam boiler large enough to furnish sufficient steam to thoroughly sterilize milk and cream

cans. No stove or heating apparatus other than a steam boiler shall be permitted to be used for the purpose of heating water with which to cleanse utensils used in a cream station collecting more than fifteen hundred (1,500) pounds of butter fat per month, providing the provisions of this section shall not apply to forwarding stations in which no testing for butter fat is made.

En. Sec. 2, Ch. 142, L. 1927.

3569.3. Penalty. Any person, firm or corporation violating any of the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than twenty-five dollars (\$25) and not more than one hundred dollars (\$100) or imprisonment in the county jail for not to exceed six months or by both such fine and imprisonment.

En. Sec. 3, Ch. 142, L. 1927.

3570. Babcock test adopted. The Babcock test is hereby adopted as the official dairy test for use in the state of Montana.

Examination to operate the test. Any person operating the Babcock test in any creamery or cheese factory, or other place where milk or cream is bought and paid for on the basis of its fat content, shall be required to pass such examination as the commissioner of agriculture shall prescribe, upon successful completion of which examination he shall receive a certificate signed by said commissioner, or his authorized agent, stating his competency to operate said test.

Fee for certificate. A fee of two dollars shall be paid to the commissioner by the applicant for said certificate. Said money shall be turned in by said commissioner to the state treasurer for the use and benefit of the general fund of the state.

Method of conducting Babcock test. The following is the method which shall be adopted as the standard for the operation of the Babcock test for the state of Montana and shall be used by persons, firms, or corporations paying for milk or cream on the basis of the butter fat content of such commodity or commodities.

Testing milk. The milk from which the sample to be tested is taken shall be thoroughly mixed by pouring from one vessel to another, three times and by stirring with an instrument suitably for the purpose. The sample to be tested shall consist of eighteen grams by weight, or seventeen and six-tenths cubic centimeters, as measured in a standard pipette. The standard strength of the acid used for all testing of milk or cream shall be indicated by the specific gravity, which shall be not less than one and eighty-two hundredths, nor more than one and eighty-three hundredths, as determined by a standard hydrometer. After properly mixing the sample of milk and acid, in the test bottle, centrifuging shall be for periods of five minutes, two minutes, and one minute. After the first period of centrifuging, water shall be added, sufficient to fill the test bottle up to the base of the neck and after the second centrifuging, water shall be added sufficient to raise the fat in the neck of the test bottle to near the top of the graduation. The water used to fill the test bottles shall be at a temperature of one hundred and forty degrees Fahrenheit

or more. After the last period of centrifuging, the test bottles shall be immersed in a bath prepared for the purpose, which shall consist of water at not less than one hundred and thirty-five degrees nor more than one hundred and forty degrees Fahrenheit, and they shall remain immersed for at least ten minutes and the temperature of the bath shall be kept between the temperatures before named for the full period of immersion. The test shall be read immediately after the test bottles are taken from the bath. Dividers shall be used to determine the length of the fat column in the neck of the test bottles.

The reading shall be from the bottom of the lower meniscus to the top of the upper meniscus of the fat column.

Testing cream. The method of testing cream shall be the same as for milk, except that all samples of cream tested shall be eighteen grams by weight, and the reading of the fat column in the neck of the test bottle shall be from the bottom of the lower meniscus to the bottom of the upper meniscus. If glymol is used to destroy the upper meniscus, the reading shall be from the bottom of the lower meniscus to the bottom of the glymol on the top of the fat column.

Alternate method of testing cream. If the operator prefers, he may use the alternate method of testing cream, hereinafter described. Before taking the samples of cream for testing, the whole body of cream shall be thoroughly mixed, as by the preceding method. All samples of cream taken for testing shall be homogenous samples of the whole body of cream from which they are taken and shall be eighteen grams by weight. After properly mixing the acid and sample of cream to be tested, the test bottle shall be filled to the base of the neck with water at a temperature of not less than one hundred and eighty degrees Fahrenheit, placed immediately in the testing machine and centrifuged for not less than five minutes. The test bottle shall then be filled to near the top of the graduation with water, at one hundred and eighty degrees Fahrenheit, replaced in the machine and centrifuged for two minutes or more. The water bath shall then be used and the reading made in the same way as in the preceding method. A standard thermometer shall be used for determining temperatures in making the Babcock test.

Use of test bottles. All test bottles, pipettes and other glassware used in connection with the Babcock test, where the fat forms a basis for the payment of the product, shall be handled and calibrated by the commissioner of agriculture or his deputies, as often as the commissioner may prescribe, such testing or calibrating to be done on the premises where such glassware is used. All bottles used for the purpose of making the Babcock test shall be standard bottles, and shall be designated as such by the word "standard" stamped thereon. All glassware found to be not standard in capacity shall be seized and destroyed by the commissioner of agriculture or his authorized agent.

False determination of test. No owner, manager, agent or employee of a cheese factory, creamery, or other place where the fat content of milk or cream is determined by test, shall falsely manipulate or under-read or over-read the Babcock test or any other contrivance used for determining the quality of milk or cream or make any false determination of the said Babcock test or other test.

Regulation of cream stations. Any person, firm or corporation, who shall operate a buying or collecting station, where milk or cream is bought or collected for the purpose of shipment to some other place, or to be sold or transferred to any creamery or any other manufacturing plant for the purpose of being made into butter or other dairy products, shall first secure a license from the state department of agriculture, labor and industry to operate such station. Upon and after the first day of May, 1923, all stations within the state of Montana where cream or milk is bought, or collected, for shipment or sale, shall have the following requirements:

Location of station. The location shall be on well drained ground at least fifty feet from any outside contaminating influence. If within a building where any other business is conducted, it shall be separated from the other rooms of the building by a tight wall or walls, and if there is an opening for passage between the room used as the station and the rest of the building, there shall be two doors, one at each end of a vestibule or entry which shall be at least six feet in length. The doors shall be of wood, or wood and glass, and sufficient to keep all odors or dust from entering the station from any other part of the building. No station for the purpose of purchasing, storing or handling milk or cream shall be situated inside of, nor within fifty feet of any blacksmith-shop, garage, grain elevator, livery-stable, or any other building, corral, hog-pen, or other place which can be denominated a contaminating influence; nor shall any oil, gasoline or any other liquid or substance of a contaminating nature, be kept within fifty feet of such station. The room used shall not be used for any purpose other than a milk or cream receiving station and shall at no time contain anything except the milk or cream received there, the cans or other receptacles in which it is shipped, and such furniture and equipment as may be necessary to efficiently conduct the business of such station. No gasoline engine shall be used or kept inside the room where the milk or cream is stored or kept. The engine or boiler shall be kept in a room partitioned off from the room where the milk or cream is kept or stored. A sanitary sink or tank with suitable drain shall be provided, in which to wash cans and other utensils used in conducting the business of the station; and a waste jar in which to empty the contents of the test bottles after the testing has been completed shall also be used. Dogs, cats, or other pet animals, shall not be permitted to enter the room where the milk or cream is stored, and pieces of screen secured by hoops, or other devices, shall be used on the top of the cans containing milk or cream while in storage, to prevent mice, insects or dirt from falling in. The floor of the room where the milk or cream is kept or stored shall be of cement or concrete, with a drain which shall be connected with a sewer, or with a pipe which shall convey the waste water underground to a point not less than fifty feet from the station. It shall be provided with windows containing at least twenty square feet of glass for each one hundred square feet of floor space. Between May first and November first, of each year, screen doors shall be provided and in use on all outside doorways, and during that time, screens shall be on all windows in the room. There shall be provided a cooling tank, large

enough to hold all of the cream or milk received or stored, and in which there shall be at all times an amount of cold running water, or ice water, sufficient to thoroughly cool all milk or cream stored there. There shall be provided a steam boiler large enough to furnish sufficient steam to thoroughly sterilize cans, or a stove or other heating plant equipped with a tank, the minimum capacity of which shall be ten gallons, to supply sufficient boiling water to thoroughly scald the same; and all cans in which milk or cream is received, shall be thoroughly washed in clean water with a sterilizing or cleansing powder added, and either sterilized with live steam or scalded with boiling water before being returned to the patron. A rack shall be provided on which cans not immediately returned to the patron, shall be inverted for the purpose of drying and airing, after being sterilized by steaming and scalding.

Unsanitary places where dairy products are manufactured or kept. Acting upon the report of an inspector employed by the state department of agriculture, labor and industry, the commissioner of agriculture, or his authorized agent, may order any creamery, cheese factory, or cream station found to be not kept in a sanitary condition, to be closed; and it shall be closed forthwith and kept closed until such time as an inspector employed by the state department of agriculture, labor and industry shall report that the sanitary conditions of such creamery, cheese factory, or cream station, are satisfactory. Any person or persons operating any creamery, cheese factory, or cream station, before receiving notice from the commissioner of agriculture or his authorized agent to open the same, shall be deemed guilty of a misdemeanor and shall be punished by a fine of not less than twenty-five dollars, nor more than two hundred and fifty dollars, or by imprisonment in the county jail for not less than ten days, nor more than thirty days, or by both such fine and imprisonment. In addition to such fine and imprisonment, any person or persons operating any creamery, cheese factory or cream station after receiving notice from the commissioner of agriculture, or his authorized agent, to close the same and before receiving notice from the commissioner of agriculture, or his authorized agent, permitting opening of the same, shall pay an additional fine of twenty-five dollars for each day such creamery, cheese factory or cream station is illegally operated. The commissioner of agriculture or any of his authorized agents shall have the right to enter any creamery, factory, building, store, receiving station, railroad depot, express office or other place where dairy products, or substitutes therefor, are manufactured, sold or kept in storage or while in transit from one place to another, for the purpose of inspection of such dairy products or substitutes for the same, to obtain samples of the same for testing or analysis. It is expressly provided that such products shall include all butter, cheese, ice-cream and other dairy products, all substitutes for dairy products and all substances made in imitation of the same, except whole milk, skimmed milk, evaporated or condensed milk or powdered milk, or any product of which the word "milk" either alone or in connection with any other word or words is used to designate the same, or any liquid or substances made or sold or offered for sale as a substitute for, or made in imitation of the same.

Interference with officer in performance of his duties. Whosoever shall refuse to allow the inspection herein provided for, or shall in any way hinder or obstruct the officers of the state department of agriculture, labor and industry in the proper performance of their duties as described in the provisions of this act, shall be deemed guilty of a misdemeanor and shall be punished by a fine of not less than twenty-five dollars, nor more than one hundred dollars or by imprisonment in the county jail for not less than ten days, nor more than thirty days, or by both such fine and imprisonment.

Amd. Sec. 9, Ch. 35, L. 1923.

3570.1. Revocation license Babcock tester. That the commissioner of agriculture, labor and industry is hereby authorized and empowered to revoke the license of any person licensed to make a Babcock test of milk or cream under the laws of the state of Montana, who shall fail to fully comply with the provisions of said law or with any of the rules and regulations of the department of agriculture, labor and industry relating to said Babcock test.

En. Sec. 1, Ch. 165, L. 1925.

3570.2. Regulation sampling of milk and cream. All persons, firms or corporations in the state of Montana purchasing milk or cream for manufacture, sale or shipment, and paying for the same on the basis of the butter fat contained therein, as determined by the Babcock test, shall take or cause to be taken in such places where the said milk or cream is purchased or tested, a representative sample of all such milk or cream, and if any be left on hand after a shipment is made, a representative sample of this shall likewise be taken. Such sample shall be not less than two ounces avoirdupois in weight and shall be immediately transferred to a clean and dry sample jar and properly sealed to prevent evaporation and the escape of any of the contents thereof. All samples of milk or cream so taken shall be plainly marked or labeled and such mark or label shall be entered upon the records of the purchaser to correspond with the name of the person, or persons, from whom such purchase was made, together with the weight of the milk or cream, if any, which is left on hand after shipment is made. Said samples shall then be protected from extremes of heat and cold and held until 5 P. M. of the following day, except that all such samples taken on a day preceding a holiday shall be held until 5 P. M. of the next day following such holiday. During the period above mentioned that said samples are held, they shall be opened only in the presence of the commissioner of agriculture, labor and industry or his authorized agent.

En. Sec. 1, Ch. 166, L. 1925.

3571. Standard measure for dairy products. The standard measure of capacity for milk shall be the gallon containing two hundred thirty-one cubic inches, the half gallon shall contain one hundred fifteen and five-tenths cubic inches, and the quart one-fourth as much as the gallon, and the pint one-half as much as the quart.

Standard butter measure. The standard measure for the sale of butter and cheese in the state of Montana shall be sixteen ounces

(avoirdupois weight) to the pound, when wrapped or put in container, exclusive of the wrapper or container. Where weight and measure are stated in pounds or ounces, they shall be exclusive of the wrapper or other container, and each pound shall contain sixteen ounces, each ounce four hundred and thirty-seven and one-half grains. All packages of butter weighing less than sixteen ounces avoirdupois, shall be of a net weight which is a binary submultiple of sixteen ounces, which is eight ounces, four ounces, or two ounces. Any person, persons, firm or corporation, selling or offering for sale, any article of dairy products as a pound, or any multiple thereof, the net weight of which is less than sixteen ounces, or the proper multiple thereof, to represent the number of pounds sold or offering [offered] for sale, shall be guilty of a misdemeanor; provided, a reasonable variance be permitted, and that tolerance shall be established by rules and regulations made by the commissioner of agriculture, in accordance with the provisions of this act.

Maker's name on package containing butter. That butter sold in the state of Montana whether manufactured on a farm or in a creamery, must have the maker's name clearly written or printed in a conspicuous place on the outside of the package in which it is sold, and upon each pound package of butter so sold or offered for sale the words "net weight sixteen ounces" or "net weight one pound" shall appear.

Amd. Sec. 10, Ch. 35, L. 1923.

3572.1. Cleansing of milk containers required. Every company, firm, corporation or person delivering milk, cream or ice-cream to any other company, firm, corporation or person, in cans or other vessels, shall have such cans or vessels at all times free from any deleterious substance, filth or rust, and in a clean and wholesome condition for containing such milk, cream or ice-cream. Every company, firm, corporation or person receiving milk, cream or ice-cream at the place of final destination in cans or vessels which are to be returned to the sender or seller, shall cause such cans or vessels to be thoroughly cleansed and immediately returned after being emptied. The term "final destination" as used in this act shall include both the final consignee of any milk, cream or ice-cream, and also any receiving station or other agent or handler by whom such milk, cream or ice-cream is transferred from the original containers thereof.

En. Sec. 1, Ch. 153, L. 1925.

3572.2. Penalty. Any person violating any of the provisions of this act shall be deemed guilty of a misdemeanor and be punished by a fine of not less than \$10 (ten dollars), nor more than \$50 (fifty dollars).

En. Sec. 2, Ch. 153, L. 1925.

3572.3. Processes of pasteurization. The process of pasteurization as applied to milk, skim milk, cream and other milk products, is hereby defined to be a process for the elimination therefrom of organisms harmful to human beings, which process shall consist of one of three following methods.

1. Uniformly heating such milk, skim milk or cream, as the case may be, and holding the same at a minimum temperature of one hundred forty-five (145) degrees Fahrenheit for a period of not less than thirty minutes or more than one hour.

2. Heating such milk, skim milk or cream, and holding the same at a minimum temperature of one hundred seventy (170) degrees Fahrenheit, for a period of not less than ten minutes.

3. The flash method which consists of heating such milk, skim milk or cream to a temperature of at least one hundred eighty-five (185) degrees Fahrenheit.

En. Sec. 1, Ch. 136, L. 1927.

3572.4. Pasteurization of milk and cream required. That within the state of Montana, all milk or cream used in a creamery for the purpose of being made into butter for sale or other commercial purposes, shall be pasteurized by one of the three methods required in this act. A creamery shall be defined as a place where the milk or cream from three or more herds of cows, owned and kept independently of one another, is used for making into butter for sale or other commercial purposes.

En. Sec. 2, Ch. 136, L. 1927.

3572.5. Milk or cream used in manufacture ice-cream to be pasteurized. That within the state of Montana all milk or cream used in the manufacture of ice-cream made for sale, shall be pasteurized before being made into such ice-cream and all butter used in the manufacture of ice-cream made for sale, shall be made from pasteurized materials. The method of pasteurization employed shall be one of the three methods required in this act.

It is provided, however, that ice-cream may be made without pasteurization and sold, when all milk or cream used in its manufacture is from cows that have been tuberculin tested within one (1) year preceding the date of such manufacture and found to be non-reacting, and when all other requirements of the laws of the state of Montana have been complied with. That in each and all places, within the state of Montana, where ice-cream is sold, and the provisions of this act have been complied with, a notice issued under the authority of the division of farming and dairying of the state department of agriculture, labor and industry and countersigned by the chief of said division of farming and dairying, shall be posted in a conspicuous place, informing the public that the ice-cream sold or offered for sale there is made from pasteurized materials, or from milk or cream from tuberculin tested and non-reacting cows, as the case may be.

En. Sec. 3, Ch. 136, L. 1927.

3572.6. Regulation of apparatus. All apparatus used for the pasteurization of milk, skim milk, or cream shall be kept in strictly clean and sanitary condition and every pasteurizing plant shall be equipped with sufficient recording thermometer devices to accurately record the temperature to which, and the length of time for which the pasteurized product has been heated. All recording thermometer devices used in

the pasteurization of any milk, skim milk or cream must be approved by and at all times subject to the approval of the department of agriculture, labor and industry of the state of Montana. Any person, firm, or corporation using pasteurizing apparatus within the state of Montana shall date, preserve and keep on file for a period of not less than two months after the same are made, all records made by such thermometer, or in lieu of such preservation may deliver such records to any public officer authorized by law or ordinance to receive same, and said records shall, at all times, be open to the inspection of said department of agriculture, labor and industry, state board of health, livestock sanitary board, and of all other state, county and municipal officers charged with the enforcement of laws and ordinances respecting dairy products or the public health.

En. Sec. 4, Ch. 136, L. 1927.

3572.7. Penalty for misuse pasteurization label. It shall be unlawful for any person, firm, or corporation by himself or itself, or by his or its servant, agent or employee, to sell, offer for sale, or exchange, or have in his or its possession for sale or exchange, any milk, skim milk, cream, butter or ice-cream, in any container or package, marked, labeled or in any other way designating the contents thereof as "pasteurized," unless the same has been treated by such a process of pasteurization as is required by the laws of the state of Montana, or have been made from pasteurized materials.

En. Sec. 5, Ch. 136, L. 1927.

3572.8. Penalty for violation act. Any person, firm or corporation who either directly or indirectly, or by his or its servant, agent or employee, shall violate any of the provisions of this act, shall be deemed guilty of a misdemeanor and shall be punished by a fine of not less than twenty-five dollars (\$25), nor more than two hundred dollars (\$200), or by imprisonment in the county jail for not less than ten (10) days, nor more than sixty (60) days, or by both such fine and imprisonment.

En. Sec. 6, Ch. 136, L. 1927.

3574. Definition of terms. The term "public warehouse" includes any elevator, mill, warehouse, or structure in which grain is received from the public for storage, shipment or handling, whenever such grain is carried or intended to be carried to or from such warehouse, elevator, mill or structure by common carrier. The term "public warehouseman" shall be held to mean and include every person, association, firm and corporation owning, controlling or operating any public warehouse in which grain is stored or handled in such a manner that the grain of various owners is mixed together, and the identity of the different lots or parcels is not preserved.

The term "grain dealer" shall be held to mean and include every person, firm, association and corporation owning, controlling or operating a warehouse, other than a public warehouse, and engaged in the business of buying grain for shipment or milling in carload lots.

The term "track buyer" shall mean and include every person, firm, association and corporation who engages in the business of buying grain

for shipment or milling in earload lots, and who does not own, control, or operate a warehouse or public warehouse.

The terms "agent," "broker," and "commission man" shall mean and include every person, association, firm and corporation who engages in the business of negotiating sales or contracts for grain or of making sales or purchases for a commission.

En. Sec. 1, Ch. 41, L. 1923.

NOTE.—While the above act does not expressly repeal section 3574, Revised Codes of 1921, it is apparent that it was intended to take the place of that section.

3575. Testing of scales—Fee.

Rep. Sec. 8, Ch. 124, L. 1927.

3575.1. Tester of scales—Employment and duties. The commissioner of agriculture shall employ an expert tester of scales, known as the state scale expert, whose duties it shall be under such rules and regulations as the commissioner may prescribe to test all scales within this state whereon grain is weighed at elevators and public warehouses; also to test all wagon scales, track scales, beet scales, stock scales, wool scales, coal scales and truck scales within the state of Montana once each year whereon coal, grain, sugar-beets and other farm commodities are weighed for the public. The state scale expert and each deputy shall give a bond to the state of Montana in the sum of one thousand dollars (\$1,000) conditioned upon the faithful performance of his duties. It shall be the duty of the state scale expert and his deputies to enforce the provisions of this act and they shall have full police power to enter or go into or upon, with or without formal warrant, any place, building or premises, for the purpose of making proper test, as required by this act. The commissioner of agriculture shall make such rules and regulations as he may deem necessary to carry out the provisions of this act.

En. Sec. 1, Ch. 124, L. 1927.

3575.2. Fees. There shall be collected by the state scale expert and his deputies from each person, firm, copartnership or corporation, for each track scale tested, the sum of ten dollars (\$10) and for each shipping scale with a capacity of forty thousand (40,000) pounds, and over, ten dollars (\$10); for each wagon scale, truck scale, coal scale, dump scale, shipping scale, beet scale, wool scale and stock scale, five dollars (\$5); and for each dormant platform scale, three dollars (\$3); and for each portable scale, grain tester and other small scales used for weighing or testing grain in grain elevators or warehouses, one dollar (\$1).

En. Sec. 2, Ch. 124, L. 1927.

3575.3. Expenses how paid. All bills and accounts of expense incurred by the state scale expert and his deputies shall be presented to the board of examiners and allowed by said board in the same manner as provided for other claims contracted for and in behalf of the state of Montana. And to expedite the handling of the work in the field there shall be set aside a contingent revolving fund of two thousand dollars

(\$2,000) out of which the expenses of the field men shall be paid each week, together with other emergency cash claims.

En. Sec. 3, Ch. 124, L. 1927.

3575.4. Certificate of test. A suitable certificate shall be prepared by the state scale expert to be affixed to all weighing devices tested under the terms of this act. Said certificate shall bear the signature of the state scale expert or his deputy doing the work and shall indicate the date when the test was made and whether the device was sealed or condemned.

En. Sec. 4, Ch. 124, L. 1927.

3575.5. Inspection required. No weighing device, which has not been tested as prescribed herein, shall hereafter be used without permission from the department of agriculture, and an inspection of each such weighing device shall be made at least once each year, provided, however, that a period of sixty (60) days after the passage of this act shall be allowed for the first test of all such scales and weighing devices, and no person shall be prosecuted for any violation of the terms of this act until after said sixty (60) days' period. The department of agriculture shall at the request of the owner of any weighing device subject to the terms of this act inspect and test such apparatus. Any person or persons making use of weighing devices subject to the terms of this act must report to the commissioner of agriculture in writing the number and location of said weighing device and must promptly report the installation of any new weighing device. No weighing device rejected or condemned after inspection as required by this act shall be used until the same has been tested and sealed as required by this act.

En. Sec. 5, Ch. 124, L. 1927.

3575.6. Special permission, when granted. The department of agriculture may grant permission for the use of a weighing device until the inspection can be made (without causing too great expense), as provided by this act.

En. Sec. 6, Ch. 124, L. 1927.

3575.7. Penalty for false tests. Any state scale expert or deputy who shall make a false test of any scale or who shall seal the same without having been properly tested in accordance with the terms of this act, shall be guilty of a misdemeanor and punished as provided in section seven. The use of a weighing device covered by this act after same has been condemned shall be punishable as provided in section seven of this act.

En. Sec. 7, Ch. 124, L. 1927.

3575.8. Repealing clause—Exception. Section 3575 of the Revised Codes of Montana of 1921 and all acts and parts of acts in conflict herewith are hereby repealed, provided, however, this act shall not be construed as repealing any of the provisions of section 3454 of the Revised Codes of Montana, 1921.

En. Sec. 8, Ch. 124, L. 1927.

3586. Duty of Warehousemen to Receiving Grain—Warehouse Receipt.

Warehouse receipts for grain stored in an elevator issued under the provisions of chapter 93, L. 1915 (since repealed), were held to constitute binding contracts

between the bailor and bailee which could not be contradicted by parol testimony, in *State v. Broadwater Elevator Co. et al.*, 61 Mont. 215, 201 Pac. 687.

3588. Regulation of delivery of grain by warehousemen—Sampling.

Upon the return of the receipt to the proper warehouseman, properly indorsed, and upon payment or tender of all advances and legal charges, grain of grade, quality and quantity equal to that placed by him in store, shall be delivered to the holder of such receipt within forty-eight hours after the facilities for receiving the same have been provided, or at the option of the owner, such warehouseman shall deliver such grain at terminal, or if mutually agreed, the equivalent market value thereof on said date, less any freight and storage charges to terminal, and such other charges as may be allowed by the commissioner of agriculture.

Owners of warehouse receipts surrendered for shipment shall furnish the warehouseman with written instructions regarding the capacity of cars to be ordered from the transportation company, and as to the manner of loading and billing shipments made in such cars as are furnished by the transportation company.

The warehouseman shall load and bill all such shipments in exact accordance with instructions given, and shall be liable to the owner of the warehouse receipt so surrendered for the amount of any excess freight paid, or for other damages suffered by the owner of the warehouse receipt, resulting from the failure of the warehouseman to follow accurately the loading and billing instructions as given him, provided that the owner of said warehouse receipt shall immediately furnish to said warehouseman a duplicate copy of the original state weight-master's certificate of weight of said car lot shipment at terminal. If any dispute or disagreement arises between the party receiving and the party delivering the grain at any public warehouse in this state as to the proper grade or dockage, or both, of any grain, in accordance with standards at terminal points, an agreed average sample of at least two quarts of said grain in dispute may be taken by the parties interested, and forwarded in a suitable container, mail or express charges prepaid, with the names and addresses of the parties, to the chief grain inspector, Great Falls, Montana, or the state grain laboratory, Bozeman, Montana, who will, upon request examine said grain and adjudge what grade said sample is entitled to under the inspection rules and which amount of dockage it contains, and the findings of such inspection shall be binding upon both parties, subject to appeal as hereinafter provided. If the grain in question is damp, musty or otherwise out of condition, this fact with any other necessary information must accompany sample.

Amd. Sec. 3, Ch. 41, L. 1923; Amd. Sec. 1, Ch. 174, L. 1925.

3588A. Regulation delivery of grain by warehousemen. No such warehouseman shall sell or otherwise dispose of, or deliver out of store, except to the owner, any stored grain, except upon notice, in advance, to the department of agriculture, and after complying in full with the

laws of the state and the regulations of the department of agriculture relating to the handling of stored grain. Any person, firm, association or corporation owning or operating more than one public warehouse in this state shall be permitted to make delivery of wheat from one warehouse in settlement of warehouse receipts issued for grain stored in another warehouse, when grain for storage has been presented at any warehouse in excess of its available storage capacity. Provided, that this shall not be construed as conferring upon such warehouseman a right to make delivery of grain of substantially lower value than that delivered for store, though of the same technical grade, in settlement of warehouse receipts; and provided further, that such warehouseman shall, at all times, keep on hand in bonded warehouses grain of quality and quantity sufficient to settle all outstanding storage receipts. Provided, further, that freight and other charges shall be figured on the basis of the point of receipt.

En. Sec. 4, Ch. 40, L. 1923.

3588B. Storage deemed bailment—Exemption from seizure. Whenever any grain shall be delivered to any person, association, firm or corporation doing a grain, warehouse or grain elevator business in this state, and the receipt issued therefor provides for the delivery of a like amount and kind, grade and quality to the holder thereof in return, such delivery shall be a bailment and not a sale of the grain so delivered, and in no case shall the grain so stored be liable to seizure upon process of any court in an action against such bailee, except action by owners of such warehouse receipts to enforce the terms thereof, but such grain shall at all times in the event of failure or insolvency of such bailee be first applied exclusively to the redemption of outstanding storage warehouse receipts for grain so stored with such bailee, and in such event grain on hand in any particular warehouse or elevator shall first be applied to the redemption and satisfaction of receipts issued by such warehouse.

En. Sec. 4, Ch. 41, L. 1923.

3589. Reports and bonds of warehousemen — Licenses — Penalties. On June 30th of each year every warehouseman shall make report, under oath to the commissioner of agriculture, on blanks or forms prepared by him, showing the total weight of each kind of grain received and shipped from such warehouse licensed under the laws of Montana, and also the amount of outstanding storage receipts on said date, and a statement of the amount of grain on hand to cover the same. The commissioner of agriculture may also require special reports from such warehouseman at such times as the commissioner may deem expedient. The commissioner may cause every warehouse and business thereof and the mode of conducting the same to be inspected by his authorized agent, whenever deemed proper, and the books, accounts, records, papers and proceedings of every such warehouseman shall at all times during business hours be subject to such inspection. Any person, firm, or corporation, who shall knowingly falsify any of its reports to the department of agriculture, or who shall refuse or fail to make such reports when requested to do so by the commissioner of agriculture or his agents, or who shall refuse

or resist inspection as provided in this section, shall be guilty of a misdemeanor and be punished by a fine of not less than fifty (\$50) dollars nor more than five hundred (\$500) dollars.

Each person, firm, corporation or association of persons operating any public warehouse or warehouses subject to the provisions of this act, and every track buyer, dealer, broker, or commission man, or person or association of persons, merchandising in grain shall, on or before the first day of July of each year, give a bond with good and sufficient sureties to be approved by the commissioner of agriculture to the state of Montana, in such sum as the commissioner may require, conditioned upon the faithful performance of the acts and duties enjoined upon them by the law.

Every person or persons, firm, copartnership, corporation, or association of persons, operating any public warehouse or warehouses, and every track buyer, dealer, broker, commission man, person or association of persons merchandising grain in the state of Montana, shall, on or before the first day of July of each year, pay to the state treasurer of Montana, a license fee in the sum of fifteen (\$15) dollars for each and every warehouse, elevator, or other place, owned, conducted, or operated by such person or persons, firm, copartnership, corporation or association of persons, where grain is received, stored and shipped, and upon the payment of such fee of fifteen (\$15) dollars for each and every warehouse, elevator or other place, where grain is merchandized within the state of Montana, the commissioner of agriculture shall issue to such person or persons, firm, copartnership, corporation or association of persons, a license to engage in grain merchandising at the place designated within the state of Montana, for a period of one year. Any person, firm, association or corporation who shall engage in or carry on any business or occupation for which a license is required by this act without first having procured a license therefor, or who shall continue to engage in or carry on any such business or occupation after such license has been revoked (save only that a public warehouseman shall be permitted to deliver grain previously stored with him), shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than twenty-five (\$25) dollars nor more than one hundred (\$100) dollars, and each and every day that such business or occupation is so carried on or engaged in shall be a separate offense.

Amd. Sec. 5, Ch. 41, L. 1923.

3589A. Insolvent warehousemen — Intervention by department.

Whenever any warehouseman, grain dealer, track buyer, broker, agent or commission man is found to be in a position where he cannot, or where there is a probability that he will not meet in full all storage obligations or (other obligations resulting from the delivery of grain, it shall be the duty of the department of agriculture, through the division of grain standards, to intervene in the interests of the holders of warehouse receipts (or other evidences of delivery of grain for which payment has not been made,) and the department of agriculture shall have authority to do any and all things lawful and needful for the protection of the interests of the holders of warehouse receipts or other evidences of the delivery of grain for which payment has not been made, and when

examination by the department of agriculture shall disclose that for any reason it is impossible for any warehouseman, grain dealer, track buyer, broker, agent or commission man to settle in full for all outstanding warehouse receipts or other evidences of delivery of grain for which payment has not been made, without having recourse upon the bond filed by said warehouseman, grain dealer, track buyer, broker, agent or commission man, it shall then be the duty of the department of agriculture for the use and benefit of holders of such unpaid warehouse receipts or other evidences of the delivery of grain for which payment has not been made, to demand payment of its undertaking by the surety upon the bond in such amount as may be necessary for full settlement of warehouse receipts or other evidences of delivery of grain for which payment has not been made. It shall be the duty of the attorney general or any county attorney of this state to represent the department of agriculture in any necessary action against such bond when facts constituting grounds for action are laid before him by the department of agriculture.

En. Sec. 6, Ch. 41, L. 1923; Amd. Sec. 1, Ch. 42, L. 1925.

3592.1. License for warehouses handling agricultural seeds. That all persons, firms, copartnerships, corporations and associations operating any public warehouse or warehouses in this state and which hold themselves out to the public as receiving agricultural seeds of any kind for storage for the public shall, on or before the first day of July of each year, pay to the state treasurer of Montana a license fee in the sum of fifteen dollars (\$15) for each and every warehouse, elevator or other place owned, conducted or operated by such person or persons, firm, copartnership, corporation or association wherein agricultural seed of any kind is received and stored, and upon the payment of such fee of fifteen dollars (\$15) for each and every warehouse, elevator or other place where agricultural seed is received and stored within the state of Montana, the commissioner of agriculture shall issue to such person or persons, firm, copartnership, corporation or association a license to engage in the storing of agricultural seed at the place designated within the state of Montana, for a period of one year.

En. Sec. 1, Ch. 50, L. 1927.

3592.2. Bond. Each such person, firm, copartnership, corporation or association subject to the provisions of the act shall, on or before the first day of July of each year, give a bond with good and sufficient sureties to be approved by the commissioner of agriculture to the state of Montana, in such sum as the commissioner may require, conditioned upon the faithful performance of the acts and duties enjoined upon them by law. Any person, firm, association or corporation who shall commence the business aforesaid after the first day of July of any year shall be required to pay said license fee and furnish such bond before engaging in or carrying on any such business.

En. Sec. 2, Ch. 50, L. 1927.

3592.3. Penalty. Any person, firm, copartnership, corporation or association who shall engage in or carry on any business or occupation

for which a license is required by this act without first having procured a license therefor, or who shall continue to engage in or carry on any such business or occupation after such license has been revoked, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than twenty-five dollars (\$25) nor more than one hundred dollars (\$100), and each and every day that such business or occupation is so carried on or engaged in shall be a separate offense.

En. Sec. 3, Ch. 50, L. 1927.

3592.4. Agricultural seeds defined. The term "agricultural seeds" as used in this act shall be held to mean and include the seeds of red clover, white clover, alsike, alfalfa, Kentucky blue-grass, timothy, brome grass, orchard-grass, redtop, meadow fescue, oatgrass, rye-grass, and other grasses and forage plants, corn, rape, buckwheat, beans, peas, and registered or certified seed grains in bags.

En. Sec. 4, Ch. 50, L. 1927.

3592.5. Duty of warehouseman to receive seeds. Every warehouseman subject to the provisions of this act shall receive for storage without discrimination of any kind so far as the capacity of his warehouse will permit all agricultural seeds tendered to him in the usual course of business in suitable conditions for storage providing, however, that he shall not be obliged to receive any agricultural seeds other than those which he holds himself out as dealing in and which he is equipped to handle.

En. Sec. 5, Ch. 50, L. 1927.

3592.6. Commissioner to prescribe rules. The commissioner of agriculture shall prescribe such rules and regulations as he may deem necessary for the safe conduct of the business referred to in this act and to that end may if he deems it necessary, require reports from said warehouseman on blanks or forms that may be prepared by him and shall prescribe the form and contents of the warehouse receipt which shall be issued and delivered to the owner of such agricultural seeds, or his representative, upon the receipt of such agricultural seed. Among other things, said receipt shall indicate whether the agricultural seed is fancy, good, fair or poor.

En. Sec. 6, Ch. 50, L. 1927.

3592.7. Storage declared a bailment. The storage of agricultural seed under the terms of this act shall constitute a bailment and not a sale and upon the return of the warehouse receipt to the proper warehouseman properly indorsed, and upon payment or tender of all advances and legal charges the holder of such warehouse receipt shall be entitled to, and it shall be compulsory for the warehouseman to deliver to such owner and holder of the warehouse receipt, the identical agricultural seed so placed in said warehouse for storage.

En. Sec. 7, Ch. 50, L. 1927.

3592.8. What warehousemen excepted—Additional bond when. None of the provisions of this act shall be construed as requiring an additional

license from a public warehouseman or other person, corporation or association, who is licensed to handle or store grain, but if any person, firm, copartnership, corporation or association holding a license to handle or store grain shall also choose to engage in the business of storing any agricultural seed for the public it shall be necessary to furnish such additional bond as the commissioner of agriculture shall determine, and in the storage of such agricultural seed such person, firm, copartnership, corporation or association shall be subject to the terms and conditions of this act.

En. Sec. 8, Ch. 50, L. 1927.

3592.9. Co-operative associations may handle seed, how. Co-operative associations or co-operative corporations when licensed to handle* agricultural seeds as herein provided may reserve sufficient storage space to provide for the storage of such agricultural seeds that may reasonable [reasonably] be expected to be tendered for storage by their members before receiving seeds for storage from nonmembers. If for any reason the preceding part of this section shall be declared invalid, then co-operative associations and co-operative corporations when licensed to handle agricultural seeds shall be subject to the same terms and conditions as others licensed to handle seeds as in the other parts of this act provided and the remaining parts of this act shall not be affected.

En. Sec. 9, Ch. 50, L. 1927.

3617.1. Horticultural revolving fund. The state treasurer and state auditor are hereby directed to open and maintain upon their respective books of accounts a fund to be known as the state horticultural revolving fund, in which shall be placed the following moneys, to wit:

1. Such sums as the legislature may from time to time appropriate for the use of said fund.

2. All moneys collected by either the commissioner of agriculture or by the county treasurer under the authority of section 3617 of the Revised Codes of Montana of 1921, where the expense incurred was paid by warrants drawn on the said state horticultural revolving fund.

3. All moneys in said fund at the time of the passage and approval of this act.

4. All moneys heretofore expended from said fund, which shall be hereafter returned thereto.

Such fund shall be maintained as a revolving fund for the use of the division of horticulture of the department of agriculture, labor and industry, out of which shall be paid such claims as may be approved by the commissioner of agriculture and the board of examiners for labor and for other expenses incurred for the removal of infected trees.

En. Sec. 1, Ch. 144, L. 1925; Amd. Sec. 1, Ch. 51, L. 1927.

3645. Department of agriculture revolving appropriation account—Earnings state fair. All fees and earnings of the department of agriculture, labor and industry and its divisions and activities from whatsoever source they may be derived, except the income and earnings of the Montana state fair, and all contributions which may be received from

public or private bounty, are hereby annually and perpetually appropriated for the use of said department of agriculture, labor and industry. All moneys received by the department of agriculture, labor and industry in the administration of all laws and the management of the institutions under its control, belonging to or for the use of the state, shall be deposited with the state treasurer on the tenth and twenty-fifth days of each month without deduction of any sort on account of salaries, fees, costs, charges, or expenses, or otherwise, and shall be credited to the general fund of the state of Montana. All fees and earnings of the Montana state fair, excepting income from the sale or rental of the capital assets of said fair, shall be deposited with the state treasurer, without deduction of any sort, and shall be credited by him to the general fund of the state for the use and benefit of the general fund. The state auditor shall keep upon his books an account to be known as the "Department of Agriculture Revolving Appropriation Account," to which shall be credited all other general fund receipts arising from all operations of the department of agriculture, labor, and industry other than the state fair, and from which shall be paid such other claims of the department of agriculture, labor, and industry as may be designated by the state board of examiners. The state board of examiners may, in its discretion, by resolution duly adopted and entered upon the minutes of said board, authorize the establishment and maintenance in the business office of the department of agriculture, labor, and industry or any of its divisions, one or more contingent revolving accounts, transferring in trust to said department such sum or sums of money as may appear necessary for the payment of demands requiring immediate cash payment, under specific regulations to be established by said board of examiners. But each and every division so granted a contingent revolving account shall report to the state board of examiners monthly all transactions involving such contingent revolving accounts, with proper vouchers for every payment made therefrom. The state board of examiners may cancel or modify such authorizations and recall such funds or any part thereof at pleasure; provided, however, that nothing in this act shall be construed as preventing the establishment and maintenance by the state board of examiners of contingent revolving accounts in the divisions of grain standards and marketing, of horticulture, and of labor and publicity, transferring in trust to the business offices of such divisions such sums of money as may appear necessary to be used by said divisions for the payment of demands, requiring immediate cash payment in connection with grain grading and inspection, orchard spraying and fruit and nursery stock inspection, and in conducting the state fair, under specific regulations to be established by said board of examiners. But each and every division granted a contingent revolving account shall report to the state board of examiners monthly all transactions involving such contingent revolving accounts, with proper vouchers for every payment made therefrom. The state board of examiners may cancel such authorizations and recall such funds at pleasure.

Amd. Sec. 1, Ch. 165, L. 1923.

3645.1. State fair revolving appropriation account. All fees and earnings of the Montana state fair, from whatsoever source they may be

derived, are hereby annually and perpetually appropriated for the use of said Montana state fair. All sums of every nature collected, received or arising from the operation of the Montana state fair shall be turned over to the state treasurer of the state of Montana, and placed by him in a special fund to be known and designated "State Fair Revolving Appropriation Account." Said fund is hereby exclusively set apart and made available for the payment of all expenses, fees and expenditures of said Montana state fair of every nature whatsoever, and said fund shall be expended, for any and all purposes, by the legally authorized management of said state fair, subject to the audit of the state board of examiners.

En. H. B. No. 87, p. 505, L. 1927.

3649.1. License of dealers in farm produce in carlots. Each person, firm, corporation or association of persons, except for a regularly established wholesale or retail dealer or merchant who is rated in the Commercial Agencies, engaged in the business of buying in carlots for resale, hay, potatoes, apples, vegetables or other farm produce, not including grain, livestock or poultry, within the state of Montana, shall on or before the first day of July of each year, give a bond with good and sufficient sureties, to be approved by the commissioner of agriculture, to the state of Montana, in such sum as the commissioner may require, conditioned upon the faithful performance of his duties as such dealer, and upon the payment when due of the purchase price of farm products purchased by him, and for the prompt reporting of sales to all persons consigning farm produce to the licensee for sales on commission, and the prompt payment to the persons entitled thereto of the proceeds of such sales less lawful charges, disbursements and commissions. Each person, firm, corporation, or association of persons, except for a regularly established wholesale or retail dealer or merchant who is rated in the Commercial Agencies, engaged in the business of dealing in farm produce, as described herein within the state of Montana, shall on or before the first day of July of each year pay to the state treasurer of the state of Montana, a license fee in the sum of \$5, and upon the payment of such fee, the commissioner of agriculture shall issue to such person, firm, corporation or association of persons, a license to engage in such business at the place described within the state of Montana for the period of one year. Any person, firm, corporation or association of persons, except for a regularly established wholesale or retail dealer or merchant who is rated in the Commercial Agencies, who shall engage in or carry on any business for which a license is required by this act, or who shall continue to engage in such business after such license has been revoked, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than \$10 nor more than \$50, and each and every day for such business engaged in shall be a separate offense.

En. Sec. 1, Ch. 147, L. 1925.

3649.2. Certain acts prohibited. Any person, firm, corporation or association of persons engaged in the business of handling farm produce under license as described herein, who shall:

(a) Impose false charges for handling, or services in connection with farm produce; or

(b) Fail to account for such farm produce promptly and properly and to make settlements therefor, with intent to defraud; or

(c) Directly or indirectly purchase for his own account, goods, received by him upon consignment, except with the consent of the owner; or

(d) Make false statements or reports as to grade, condition, markings, quality or quantity of goods received, shipped or packed in any manner with intent to deceive; is guilty of a misdemeanor, and the commissioner may forthwith revoke the license granted such person, firm, corporation, or association of persons.

En. Sec. 2, Ch. 147, L. 1925.

3649.3. General supervision of commissioner of agriculture. The commissioner of agriculture may require regular and special reports from licensees under this act at such times, and in such form as he may deem expedient. He may upon complaint cause the business of any licensee and the mode of conducting same to be inspected, and the books, records, accounts, papers and procedures of every such licensee shall at all times during business hours be subject to such inspection. It shall be the duty of the commissioner of agriculture to intervene in the interests of claimants in cases of insolvency, violations of the provisions of section 2 of this act, or failure to report upon or pay for farm produce received by any such licensee. The commissioner of agriculture shall have power to demand payment of its undertaking by the surety upon any bond given under this act and it shall be the duty of the attorney general or any county attorney of this state to represent the commissioner of agriculture in any necessary action against such bond when facts constituting grounds for action are laid before him.

En. Sec. 3, Ch. 147, L. 1925.

CHAPTER 255.

FISH AND GAME LAWS—COMMISSION AND WARDEN.

3652. Meetings. The members of the commission shall within thirty days after their appointment and annually thereafter meet and organize by electing from its membership a chairman and shall hold quarterly or other meetings for the transaction of business, at such times and places it may deem necessary and proper, said meetings to be called by the chairman, or by a majority of the commission, and to be held at the time and place specified in the call for the same. A majority of the members of the commission shall constitute a quorum for the transaction of any business which may come before it. The said commission shall keep a record of all the business transacted by it. The chairman and secretary, hereinafter designated, shall sign all orders, minutes or documents for the commission.

Amd. Sec. 1, Ch. 77, L. 1923; Amd. Sec. 1, Ch. 192, L. 1925.

3653. Powers and duties of commission. The commission hereby created shall have supervision over all the wild life, fish, game, and non-

game birds, and water-fowl, and the game, and fur-bearing animals of the state, and shall possess all powers necessary to fulfill the duties prescribed by law with respect thereto, and to bring actions in the proper courts of this state for the enforcement of the fish and game laws of the state, and the orders, rules and regulations adopted and promulgated by the commission. It shall have full power and authority to enforce all the laws of the state of Montana, respecting the protection, preservation and propagation of fish, game, and fur-bearing animals, game and nongame birds, within the state. It shall have the exclusive power to expend for the protection, preservation and propagation of fish, game and fur-bearing animals, and game and nongame birds, all funds of the state of Montana, collected or acquired for that purpose, whether arising from state appropriations, licenses, fines, gifts, or otherwise, all sums collected or received from the sale of hunting and fishing licenses or permits, from the sale of seized game or hides, or from fines, damages collected for violations of the fish and game laws of this state, from appropriations, or received by the commission from any other sources are hereby appropriated to and placed under control of the Montana fish and game commission. It shall have power to discharge any appointee or employee of such commission for cause at any time. It shall have full power and authority to dispose of all property owned by the state of Montana, used for the protection, preservation and propagation of fish, game and fur-bearing animals, and game and nongame birds, which shall have been found to be of no further value or use to the state, and shall turn over proceeds arising therefrom to the state treasurer to be by him credited to the state fish and game fund. It shall have full power and authority to use so much of the fish and game funds of the state as may be necessary for the construction, maintenance, operation, upkeep, and repair of fish hatcheries, game farms, or other property or means and appliances for the protection and propagation of fish, game and fur-bearing animals, or game or nongame birds in the state of Montana, and it shall have the authority to appropriate moneys from the funds at its disposal for the extermination or eradication of predatory animals that destroy fish, game, or fur-bearing animals, or game or nongame birds. It shall have authority to provide for the importation of game birds and game and fur-bearing animals, and for the protection, propagation, and distribution of such imported or native birds and animals. It shall have authority to spend so much of the state fish and game funds as may be necessary to introduce and propagate wild water-fowl food and for that purpose may secure expert advice as to what kinds of water-fowl foods are adapted to the climate, soil, and waters of this state. It shall be its duty to furnish plans for, and to direct and compel the construction and installation and repair of fish ladders upon dams and other obstructions in streams which, however, shall be installed and maintained at the expense of the owners of said dam or other obstruction. It shall have the authority to purchase and maintain at the expense of the state fish and game fund suitable fish screens or fish wheels, or other devices, to install them in irrigating ditches to prevent fish entering said ditches. It shall have authority to locate, lay out, construct and maintain nurseries and rearing ponds where fry can be planted, propagated and reared, and when of suitable sizes, liberated

and distributed in the waters of this state, and may expend from the state fish and game funds such sums as may be necessary for this purpose. It shall have authority to acquire by gift, purchase, capture, or otherwise, any fish, game, game birds, or animals, for propagation, experimental or scientific purposes. It shall have authority to divide the state into fish and game districts, and to create fish, game, or fur-bearing animal districts throughout the state of Montana and to declare closed seasons for hunting, fishing, or trapping in any of said districts, so created, and later to open said districts to hunting, fishing, or trapping. It shall have authority to declare a closed season on any species of game, fish, or game birds, or fur-bearing animals threatened with undue depletion, from any cause, and to close any area or district or any stream, public lake, or public water, or portions thereof, to hunting, trapping, or fishing, for limited periods of time, when such action is necessary to protect recently stocked area, district, water, spawning waters, spawn-taking waters, or spawn-taking stations, or to prevent the undue depletion of fish, game, and fur-bearing animals, and game and nongame birds, and later to open the same upon consent of a majority of the property owners affected. It shall have authority to establish game refuges for the purpose of providing safe sanctuaries in which game and fur-bearing animals or game or nongame birds may breed and replenish. Such refuges shall be established by order of the commission upon the petition and proper showing that such action is, in judgment of the fish and game commission, necessary and in the best interest of the wild life within the area, to be included within such refuge, it being the purpose of this provision to establish small refuges rather than large preserves or rather than to close large areas to hunting or trapping. It shall have authority to designate and protect certain areas as resting, feeding and breeding grounds for migratory birds, in which hunting and molestation shall be forbidden; it being the purpose of this provision not to interfere unduly with the hunting of water-fowl, but to provide havens in which they can rest, feed, and breed without molestation. After petition has been duly filed with the secretary of the commission, praying that an area shall be set aside as a game refuge or haven, the said secretary shall immediately publish a notice in a paper of general circulation in the county in which said area is proposed, that a hearing in connection therewith will be held at such place in said county as may be designated on a day not less than fifteen (15) days from the date of the first publication, to be specified in said notice, at which time and place all interested parties shall have the right to appear and be heard. It shall have authority to establish and maintain an educational and biological department of their work for the collection and diffusion of such statistics and information as shall be germane to the purpose of this act. Said commission shall, in addition to the powers heretofore granted, have such other and further powers as may be necessary to fully carry out the purpose and intent of all the laws pertaining to fish, game, and fur-bearing animals, game and nongame bird propagation, protection, conservation, and management of this act.

Amd. Sec. 2, Ch. 77, L. 1923; Amd. Sec. 2, Ch. 192, L. 1925.

3654. Compensation of commissioners. The members of the commission shall receive no compensation for their services as members thereof, except a per diem of ten dollars (\$10) for each member for every day in actual attendance at the meetings of said commission, or in the execution of their duties as members of said commission; provided, however, that in no instance shall any member of said commission receive as said per diem a sum in excess of four hundred dollars (\$400) in any one year, and the members of said commission shall be allowed their actual and necessary traveling expenses, while performing their duties as members of said commission, which shall be paid from the fish and game fund of the state, upon presentation of proper vouchers therefor.

Amd. Sec. 1, Ch. 59, L. 1927.

3655. State fish and game warden—Qualifications—Duties. The state fish and game commission shall appoint and employ a state fish and game warden, who shall continue in the office at the pleasure of said commission. He shall be a person having experience, special training and skill in wild life protection, conservation, and management. He shall be the secretary of the state fish and game commission, attend the meetings of said commission, and keep a record of all of its transactions and shall make and keep an inventory showing the description and value of all property owned by the state and under the administration of said commission. He shall be the administrative agent of the state fish and game commission, custodian of the property and records of the fish and game department, and shall maintain his office at the seat of the state government. He shall devote all his time to his official duties, and such state fish and game warden shall have all the powers and duties which are now or may hereafter be by law conferred upon and delegated to the state game warden or the state fish and game warden. His powers and duties shall include those of a deputy state fish and game warden hereinafter enumerated. He shall be subject to the supervision and control of said commission and may be removed from office by said commission for neglect of duty, incompetency, or other good cause. The state fish and game warden shall be paid a salary fixed by the commission not exceeding in amount three thousand dollars (\$3,000) per year, and in addition thereto shall be allowed his actual and necessary traveling expenses while away from the seat of government upon official business connected with his office, but in no instance shall he be allowed as expenses a sum in excess of two thousand dollars (\$2,000) in any one year, the same to be paid upon proper vouchers from the fish and game fund of the state.

Amd. Sec. 3, Ch. 192, L. 1925; Amd. Sec. 2, Ch. 59, L. 1927.

3656. Deputy fish and game wardens—Appointment. The state fish and game warden, by and with the consent and approval of the commission, shall have power to employ, and appoint a number of deputy state fish and game wardens not in excess of twenty-two for the proper enforcement of the fish and game laws of the state, or for such purposes as the warden may direct who shall be peace officers and hold their offices for such time as the warden may direct, and who may be removed from

office by said warden at any time for cause, after due hearing before said commission. The said commission shall assign to each deputy state fish and game warden, appointed or employed the territory or district in which he is to perform his duties and work, which may be changed at any time by said commission. Said deputy fish and game wardens shall perform their duties at the direction of, and subject to the supervision and control of the state fish and game commission and the state fish and game warden; provided, however, the commission may employ for a limited period of time, special deputy game wardens to patrol said districts and enforce the game and fish laws of the state of Montana therein, and to perform such duties in said districts as may be prescribed by said commission for the limited time for which they are so employed; and further, such special deputy game wardens shall receive in compensation not to exceed one hundred twenty-five dollars (\$125) per month and actual expenses.

Amd. Sec. 4, Ch. 192, L. 1925; Amd. Sec. 3, Ch. 59, L. 1927.

3659. Deputy state fish and game wardens—Qualifications—Duties.

The deputy state fish and game wardens employed and appointed by virtue of this act shall be persons who have had experience, training, and skill in protection, conservation, and propagation of wild life, game, and fur-bearing animals, fish and game birds, and who shall be interested in said work; they shall devote all of their time for which they are appointed, to their official duties; it shall be their duty to see that the laws of the state of Montana and the laws, orders, rules and regulations of the state fish and game commission with reference to the protection, preservation and propagation of game and fur-bearing animals, fish and game birds are strictly enforced; it shall be their duty to see that all those who hunt, fish, or take game, or fur-bearing animals, game birds, or fish, have necessary licenses. They shall have authority to serve subpoenas issued by any court for the trial of offenses against any of the fish and game laws of the state; they shall have authority to make a search, when they have reasonable cause to believe that any of the game, fish, birds, or quadrupeds, or any parts thereof, have been killed, captured, taken or possessed, in violation of the laws of this state, and without search warrant, to search any tent not used as a residence, boat, car, automobile, or other vehicle, box, locker, basket, creel, crate, game bag, or other package and the contents thereof to ascertain whether any of the provisions of the laws of this state or the rules and regulations of the fish and game commission, for the protection, conservation or propagation of game and fish or game birds or fur-bearing animals have been violated, and with a search warrant to search and examine the contents of any dwelling-house or other building, to seize and confiscate all game, fish, game birds, and fur-bearing animals or any parts thereof, possessed in violation of the law, or the orders, rules and regulations of the commission, or showing evidence of illegal taking, and seize and confiscate all devices used in the taking of game and fur-bearing animals, fish or game birds illegally, and to hold the same subject to law or the orders of said state fish and game commission; to arrest without warrants any persons committing in their presence any offense against the fish and game laws of the state of Montana, or against any orders,

rules and regulations of the commission violation of which has been made a misdemeanor by the provisions of this act, and to arrest without warrant any person who they have reasonable and probable cause to believe has committed any such offense and to take such person immediately before a magistrate having jurisdiction of the same, and to exercise such other powers of peace officers in the enforcement of the fish and game laws of the state, and the orders, rules and regulations of the commission, or of judgments obtained for the violation thereof, not herein specifically provided. It shall be their duty at all times to assist in the protection, conservation and propagation of fish, game, and fur-bearing animals, game and nongame birds, and to assist in the planting, distributing, feeding and caring for fish, game and fur-bearing animals, and game and nongame birds; it shall be their duty when ordered by the state fish and game commission, to assist in the destruction of predatory animals, birds, and rodents; it shall be their duty to do and perform all other duties prescribed from time to time by the state fish and game commission, and to make a monthly report to said commission correctly and truthfully informing the said commission of just what each said deputy fish and game warden has done during each day of the preceding month, with regard to the enforcement of the fish and game laws of this state, showing where his duties called him, and what he was called upon to do, and said report shall contain any pertinent recommendations said deputy may see fit to make. No deputy or special deputy fish and game warden shall have authority to compromise or settle out of court, any violations of the state fish and game laws.

Amd. Sec. 5, Ch. 192, L. 1925.

Cited in *Rosenfeld v. Jakways et al.*, 67 Mont. 558, 564, 216 Pac. 776.

3661. Deputy state fish and game wardens — Removal — Rating — Salary, etc. The state fish and game commission shall have power to remove, suspend without pay, to reduce in rank, to act as a trial board in hearing and passing upon charges against deputy state fish and game wardens, and to rate all such deputies on the basis of merit and efficiency, in accordance with such rules and regulations as it may adopt to secure a proper rating of deputy state fish and game wardens or to carry out the provisions of this section. It shall rate all deputy state fish and game wardens on the basis of merit and efficiency in two grades, to be known as the first and second grades. Deputy state fish and game wardens shall not be removed unless furnished with a reason for removal and given a hearing in his own defense. The salary of the deputy state fish and game wardens shall be as follows: Those of the first grade a sum not exceeding one thousand eight hundred dollars (\$1,800) per annum provided that the commission may at its discretion pay not more than six (6) first grade men a salary not exceeding twenty-one hundred dollars (\$2,100) per year; and those of the second grade a sum not exceeding one thousand six hundred fifty dollars (\$1,650) per annum.

Each deputy state fish and game warden shall be allowed his actual and necessary traveling expenses while away from his place of residence upon official business connected with his office, not exceeding the sum of six hundred dollars (\$600) per year, unless special work shall be ordered by the fish and game commission; said expenses to be approved by said

state fish and game warden and to be paid upon proper voucher from the state fish and game fund.

Amd. Sec. 6, Ch. 192, L. 1925; Amd. Sec. 4, Ch. 59, L. 1927.

3662. Special deputy state fish and game wardens. The state fish and game warden may appoint anyone who is a bona fide resident and citizen of the state as a special deputy fish and game warden. Such special deputy fish and game warden shall hold his appointment during the pleasure of the commission, or state game warden, and shall have the same powers and duties as other deputy state fish and game wardens, but shall receive no pay for his service, except that the commission may in its discretion, allow him his actual and necessary traveling expenses, and all expenses paid by him for transportation, board and lodging of persons under arrest for violation of the game, fish and fur-bearing animal laws, orders, rules, or regulations, which, if allowed shall be paid upon proper voucher from the state fish and game fund.

Amd. Sec. 7, Ch. 192, L. 1925.

3664. Superintendent of state fisheries—Appointment and bond. The state fish and game commission shall have general supervision over all hatcheries in the state, and shall appoint and employ a superintendent of fisheries, who shall be a competent person and a skilled fish culturist. He shall act solely under the direction of the state fish and game commission. The output of all state hatcheries shall be used to stock the lakes and streams of the state and shall be for free and impartial distribution within the state, such distribution to be under the direction of said superintendent of fisheries subject to an official order of the commission. He shall have the power to exchange spawn or fish with other states or persons for distribution in this state. Before entering upon his official duties the superintendent so appointed and employed by said commission shall execute and file a bond with the secretary of state, in the sum of two thousand dollars (\$2,000) with sureties thereon, approved by the state treasurer, to the state of Montana, conditioned for the faithful performance of his official duties, and that he will account for and pay over, pursuant to law, all moneys received by him. He shall be reimbursed for the premium on said bond from the fish and game fund of the state, upon presentation of a proper voucher therefor.

Amd. Sec. 8, Ch. 192, L. 1925.

3665. Superintendent of state fisheries—Salary. The superintendent of state fisheries, appointed and employed by the commission shall receive for his services a salary of not to exceed thirty-six hundred dollars (\$3,600), and his actual and necessary traveling expenses while absent from his place of residence and upon official business connected with his office, but in no instance shall he be allowed for such expenses a sum in excess of one thousand five hundred dollars (\$1,500) in any one year, which shall be paid from the state fish and game fund on proper vouchers.

Amd. Sec. 9, Ch. 192, L. 1925; Amd. Sec. 5, Ch. 59, L. 1927.

3666. Superintendent of state fisheries—Duties and powers. The superintendent of state fisheries shall have full control of all state fish

hatcheries and shall be responsible for their construction, maintenance, and operation, subject at all times to an order of the commission. All such construction work done under contract or otherwise, shall be done under control and supervision of said superintendent of fisheries, subject to his acceptance under the direction of the commission. He shall have charge of the work of taking and collecting all spawn, the hatching of all spawn and eggs, rearing, propagating and distribution of fry, fingerlings and fish, and with the consent of the state fish and game commission, he shall have power and authority to employ such assistance and help as may be necessary in the operating of fish hatcheries of the state, the gathering of eggs, or the performance of any other work in connection with the protection, propagation and distribution of fish and fry. He shall have authority with the consent of the commission, to purchase so many eyed eggs from time to time, as may be necessary in order to keep the hatcheries of the state supplied with eggs and in full operation, the quality and kind of species of eggs to be determined by the superintendent or commission; provided, however, that the said superintendent shall make every reasonable effort to collect sufficient eggs from the public streams or lakes of this state, to supply said hatcheries, and for that purpose shall have the right and authority to build, equip, and use fish traps and nets at any and all seasons of the year in all the public waters of the state. Said superintendent shall have authority when authorized to by the commission, to purchase the eyed eggs of fish not propagated in this state, for the purpose of stocking the waters in this state.

Amd. Sec. 10, Ch. 192, L. 1925.

3670. State fish and game fund. All sums collected or received from the sale of hunting and fishing licenses or permits, from the sale of seized game or hides, or from fines, damages collected for violations of the fish and game laws of this state, from the appropriations, or received by the commission from any other source, shall be turned over to the state treasurer, and placed by him in a special fund known and designated as the "state fish and game fund"; provided, that out of any fines imposed by a court for the violation of this act, the costs of prosecution shall be paid to the county where the trial was held, in any case where the fine is not imposed in addition to the costs of prosecution. Said fund is hereby exclusively set apart and made available for the payment of all salaries, per diem, fees, expenses and expenditures of every source and kind whatsoever, authorized to be made by the state fish and game commission under the terms of this act, and said funds shall be expended for any and all such purposes, by said commission, subject to the proper audit and allowance by the state board of examiners and by appropriation by the legislative assembly at each session.

Amd. Sec. 32, Ch. 59, L. 1927.

3677. Publications. The orders, rules and regulations of the state fish and game commission shall be published and posted in the following manner:

(1) Those having general application throughout the state shall be published in such manner and to such an extent as the state fish and game commission deems necessary and may direct.

(2) Those of general or special character having local application only shall be published once in some newspaper having general circulation in the locality or district wherein such rules, regulations, or orders are applicable, and shall be posted in three conspicuous places in the locality or district in which they are applicable.

Amd. Sec. 11, Ch. 192, L. 1925.

CHAPTER 256.

FISH AND GAME LAWS—LICENSES—PROTECTION AND PROPAGATION OF FISH AND GAME.

3681. Definition of terms. For the purpose of this act, the following shall be construed, respectively to mean:

"Commission." The state fish and game commission.

"Person." The plural or singular, male or female, as the case demands, including individual, associations, partnerships, and corporations, unless the context otherwise requires.

"Open season." The time during which game birds, fish, game, and fur-bearing animals be lawfully taken.

"Closed season." The time during which game birds, fish, game, and fur-bearing animals may not be lawfully taken.

"Angling or fishing." The taking of, or attempting to take fish by hook and line or rod in hand.

"Upland game birds." Sharptailed grouse, blue grouse, prairie chicken, sage-hen or sage grouse, fool-hen, ruffed grouse commonly called native pheasant or native partridge, quail, Chinese pheasant and Mongolian pheasant commonly called ring-necked pheasant, Hungarian partridge, ptarmigan, and wild turkey.

"Migratory game birds." Water-fowl, including wild ducks, wild geese, brant, and swans; cranes, including little brown, sandhill and whooping cranes; rails, including coots, gallinules, sora or other rails, shore birds, including avocets, curlew, dowitcher, godwits, knots, upland plover, killdeer, sandpipers, Wilson snipes, or jacksnipes, snipes, stilts, plovers, willets and yellow-legs; and mourning or turtle doves.

"Nongame birds." All wild birds not defined herein as upland game birds or migratory game birds shall be deemed nongame birds.

"Game animals." Deer, elk, moose, antelope, caribou, mountain sheep, mountain goat, and bear.

"Fur-bearing animals." Marten or sable, otter, fox, muskrat, fisher, mink, raccoon, and beaver.

"Predatory animals." Coyote, wolf, wolverine, mountain lion, lynx, weasel, skunk, and civit cat, black-footed ferret, and bobcat.

"Game fish." Mountain trout, cutthroat or native trout, (*Salmo Mykiss*); rainbow trout, (*Salmo Irideus*); Eastern Brook trout, (*Salvelinus Fontinalis*); grayling, (*Thymallus Montanus*); steelhead trout, (*Salmo Rivularis*); Dolly Varden trout, (*Salvelinus Malma*); Loch Leven trout, (*Salmo Trutta Levenesis*); chinook salmon, (*Oncorhynchus Tschawytsha*); silver salmon, (*Oncorhynchus Kisutch*); sockeye salmon, (On-

corhynchus Nerka); Rocky Mountain whitefish, (*Coregonus Williamsoni*); yellow perch, ringed perch, (*Perca Flavescens*); large-mouth black bass, (*Micropterus Salmoides*); small-mouth black bass, (*Micropterus Dolomieu*); common sunfish, pumpkinseed, (*Lepomis Gibosus*); Great Northern pike, Northern pickerel, (*Esox Lucius*); pike perch, wall-eyed pike, pike, yellow pike, (*Stizostedion Vitreum*); Mackinaw trout, (*Salvelinus Namaycush*).

Amd. Sec. 12, Ch. 192, L. 1925; Amd. Sec. 6, Ch. 59, L. 1927.

3682. License required. It shall be unlawful and a misdemeanor, punishable as in this act hereinafter provided, for any person to pursue, hunt, trap, take, shoot, kill or attempt to trap, take, shoot or kill, any game animal, or any game bird, or any fur-bearing animal, or to take, kill, trap, or fish, for any fish within this state, or to have, keep or possess within this state any game animal, game bird, fur-bearing animal, or game fish, or parts thereof, except as herein provided or shall be provided by the state fish and game commission, or for any person to pursue, hunt, trap, take, shoot or kill, or attempt to trap, take, shoot or kill, any game animal, game bird, or fur-bearing animal, or take, kill, trap, or fish for, any fish, except at the places and during the periods and in the manner herein defined or shall be defined by the state fish and game commission, or for any person to pursue, hunt, trap, take, shoot or kill, or attempt to trap, take, shoot or kill any game animal, game bird, or fur-bearing animal, or take, kill, trap, or fish for, any fish within this state, or have, keep, possess, sell, purchase, ship or reship, any imported or other fur-bearing animal, or parts thereof, without first having obtained a proper license or permit from the commission so to do.

The provisions of this act relative to licenses and permits shall be in full force and effect on and after May 1, 1927.

Amd. Sec. 13, Ch. 192, L. 1925; Amd. Sec. 7, Ch. 59, L. 1927.

3683. Classes of licenses. Licenses shall be divided into the following classes:

Class A, resident, general license.

Class B, nonresident, general license.

Class C, nonresident, limited license.

Class D, nonresident, fishing license.

Class E, alien, general license.

Class F, alien, fishing license.

Class G, trapper's license.

Amd. Sec. 8, Ch. 59, L. 1927.

3685. Fees and powers under licenses. Said applicant, if a resident of the state of Montana and a citizen of the United States, shall pay to the officer or person countersigning and issuing the license the sum of two dollars (\$2), as a license fee, and shall obtain a license of class A, which shall entitle the holder to pursue, hunt, shoot, kill, capture, take, and possess game, game birds and animals and to fish with hook and line or rod in hand as authorized by this act.

All citizens of the United States who have lived in this state for at least six (6) months immediately preceding their application for a

license, or officers, soldiers, sailors and marines of the United States army, navy, or marine corps, shall be deemed resident citizens for the purpose of this section, as well as all officers of the forest service and of the biological survey of the United States department of agriculture.

Said applicant, if a nonresident of the state, or a resident for less than six (6) months immediately preceding his application for a license, and a citizen of the United States, shall pay to the officer countersigning and issuing the license the sum of thirty dollars (\$30) as a license fee, and shall obtain a license of class B, which shall entitle him to pursue, hunt, shoot, kill, capture, take and possess game, game birds and animals, and to fish with hook and line or rod in hand as authorized by this act; and such nonresident, on like application and on the payment of the sum of ten dollars (\$10), as a license fee, shall obtain a class C license, which shall entitle him to pursue, hunt, shoot, kill and take game birds and to fish with hook and line or rod in hand as authorized by this act; and such nonresident, on like application and on the payment of the sum of three dollars and fifty cents (\$3.50), as a license fee, shall obtain a class D license, which shall entitle the holder to fish with hook and line or rod in hand as authorized by this act.

Said applicant, if an alien, resident or nonresident, shall pay to the officer countersigning and issuing the license the sum of fifty dollars (\$50), as a license fee, and shall obtain a class E license, which shall authorize him to pursue, hunt, shoot, capture, kill, take and possess game, game animals and game birds, and to fish with hook and line or rod in hand as authorized by this act; such alien, on the payment of the sum of ten dollars (\$10), as a license fee, shall obtain a class F license, which shall entitle him to fish with hook and line or rod in hand as authorized by this act; provided, however, that any person in possession of first citizenship papers shall not be considered a resident of the state of Montana for the purposes of this act.

The applicant for a class G license, or trapper's license must be the owner and in possession of a class A license, and upon the payment of the sum of ten dollars (\$10) to the officer to whom the application for a class G license is made shall receive and obtain a class G or trapper's license, which shall authorize the holder thereof to trap fur-bearing animals within the state at such times and in such manner as may be lawful so to do under the laws of this state and the regulations of the fish and game commission, and at such places as may be designated in said license.

Any person violating any of the provisions hereof or any of the rules or regulations of the fish and game commission relating hereto shall be guilty of a misdemeanor and upon conviction thereof shall be punished as hereinafter provided.

All sums collected for licenses sold, or received for permits issued, from the sale of seized game, or from fines, or the sale of firearms or other chattels confiscated, from damages collected for violations of the fish and game laws of this state, from appropriations, or received by the state fish and game commission, from any and all other sources are hereby appropriated to and placed under control of the state fish and game commission. All moneys so received shall be remitted by the state fish

and game warden to the state treasurer to be by him placed to the credit of the fish and game fund.

Twenty-five cents (25c) out of every fishing and hunting license fee collected shall be set aside as a fund to be used by the fish and game commission for the destruction of predatory animals. The sum of seven thousand five hundred dollars (\$7,500) of said fund shall be transferred therefrom on or before January first of each year to the bounty fund of the state, to be used to pay bounty on predatory animals, as provided by law. Said sum of seven thousand five hundred dollars (\$7,500) shall be matched with a like sum of the said bounty fund money derived from the tax on livestock now provided by law, and said total sum of fifteen thousand dollars (\$15,000) or such part thereof as may be necessary, shall be expended for payment of bounties on predatory animals. In the event that there shall be any unexpended portion of said fifteen thousand dollars (\$15,000) at the close of any bounty paying season of any year, fifty per cent (50%) of such unexpended balance shall be retransferred to the fund for the destruction of predatory animals created herein. Nothing herein contained shall be so construed as to prevent the livestock commission from expending from the county fund any part thereof in excess of fifteen thousand dollars, (\$15,000), which may be necessary for the purpose of paying bounties.

Amd. Sec. 4, Ch. 77, L. 1923; Amd. Sec. 14, Ch. 192, L. 1925 (also by Sec. 1, Ch. 161, L. 1925); Amd. Sec. 9, Ch. 59, L. 1927.

3686. Temporary receipt in lieu of license.

Rep. Sec. 26, Ch. 77, L. 1923.

3689. Carrying and exhibiting license. It shall be unlawful and a misdemeanor punishable as in this act hereinafter provided for any person to whom a license or permit has been issued to fish for or take any fish, or pursue, hunt, shoot, kill, or take, any game bird or game animal or attempt to trap, or trap, or take, any fur-bearing animal in this state unless at the time he shall have such license or licenses, or permit, in his possession, and it shall be unlawful to refuse to exhibit the same for inspection to any deputy state fish and game warden or other officer requesting to see the same.

Amd. Sec. 10, Ch. 59, L. 1927.

3691. Exception. The provisions of the act shall not apply to persons pursuing, hunting, capturing, shooting, killing, taking or trapping, or attempting to kill, take or trap predatory animals, prairie dogs, ground squirrels, skunks, weasels, jack-rabbits, gophers, or English sparrows, crows, hawks, snow owls, great gray owls, great horned owls, blackbirds, kingfishers, magpies, jays and eagles, which may be pursued, hunted, taken, killed, shot, trapped, possessed, bought, sold or transported at any time, and persons under fifteen (15) years of age may pursue, hunt, shoot, kill, take and capture game animals, game birds, and fish for and take fish, during the open season without a license.

Amd. Sec. 11, Ch. 59, L. 1927.

3694. Restrictions on the manner of taking and possessing fish and game. It shall be unlawful and a misdemeanor punishable as in this act

hereinafter provided, for anyone to take, capture, shoot, kill, or attempt to take, capture, shoot or kill any game or fur-bearing animal or game bird from any automobile or by the aid or with the use of any set-gun, jack-light, or other artificial light, trap, snare or salt-lick, nor shall any such set-gun, jack-light, or other artificial light, trap, snare, salt-lick, or other device to entrap or entice game animals or game birds be used, made or set; provided, however, that this does not prohibit the shooting of wild water-fowls from blinds or over decoys with a gun only, not larger than a number ten (10) gauge, fired from the shoulder, nor shall game birds or game animals be killed or hunted from an aeroplane, power-boat, sailboat, or any boat under sail or any floating device towed by a power-boat, sailboat, or any boat under sail; nor shall any person take into a field or forest or have in his possession while out hunting, any device or mechanism devised to silence or muffle or minimize the report of any firearm, whether such device or mechanism be operated from or attached to any firearm; nor shall any person chase with dogs any of the game or fur-bearing animals as defined by the fish and game laws of this state; provided, however, that livestock owners, employees of the state fish and game commission and of the United States bureau of biological survey may use dogs in the pursuit of stock killing bears, or other means of taking stock killing bears except the use of the dead fall, providing, however, that traps shall be inspected twice each day, which inspection shall be twelve hours apart; and provided further, that a person may take game birds during the open season thereof, with the aid of a dog or dogs and any person or association organized for the protection of game, may run field trails at any time upon obtaining written permission from the state fish and game warden.

It shall hereafter be unlawful and a misdemeanor, punishable as in this act hereinafter provided, for any person to kill or take from the waters of this state more than forty (40) fish in the aggregate, with a net weight of twenty (20) pounds and one (1) fish in any one day, of the variety of fish designated herein as game fish, nor more than five (5) such game fish which are less than seven (7) inches in length, except sunfish, yellow perch, ring perch and bass, in any one day. It is hereby declared to be the intention of this act to provide that forty (40) fish, with net weight of not more than twenty (20) pounds and one (1) fish of any and all the game fish, shall constitute the limit for a day's fishing. It shall be unlawful and a misdemeanor, punishable accordingly, for any person to be in possession of more than five (5) game fish which are less than seven (7) inches in length, or more than forty (40) fish in the aggregate, or more than twenty (20) pounds net weight and one (1) fish of any and all kinds of game fish at any one time. This section shall apply to both fresh game fish and to game fish which have been dried, salted or otherwise cured.

It shall be lawful to catch fish in the Yellowstone, Missouri and Kootenai Rivers at any season of the year with hook and line, or rod in hand, and ling may be caught in said rivers at any season of the year with set-lines; provided, however, that the commission shall have the power to limit the fishing for ling to angling when it is ascertained that game fish are being caught with said set-lines. It shall be lawful to take

by angling nongame fish in any quantity from any of the waters of the state during the open fishing season pertaining to such waters.

Game fish shall be taken only by angling, that is by hook and line in hand or rod in hand; this does not prevent, however, the use of a landing net or gaff to land a game fish after the same has been hooked by angling as above specified, nor does it prevent the taking of minnows other than game fish variety by the use or aid of a small hand net.

The fish and game commission is hereby granted authority to regulate, supervise and prohibit the use as fish bait of salmon eggs or salmon spawn, or any imitations or substance prepared therefrom, in any stream in this state whenever they deem necessary. Whenever the said commission shall have made an appropriate order under the powers conferred upon it by this section, prohibiting the use of salmon eggs or salmon spawn, or any imitations or substance prepared therefrom, as bait in any specified stream or streams in the state of Montana, it shall be unlawful and a misdemeanor, punishable as in this act hereinafter provided, for any person to fish with or use as fish bait any salmon eggs or salmon spawn, or any imitations or substances prepared therefrom, in the stream or streams designated by such order or orders.

It shall be unlawful and a misdemeanor, punishable as hereinafter provided, to catch any game fish through the ice, except in such waters as are designated under proper order of the state fish and game commission. In case any game fish is unintentionally taken contrary to the prohibitions or restrictions contained in this act, such fish shall be immediately liberated and returned to the water without unnecessary injury. Any person who shall pursue, hunt, trap, possess, take, capture, shoot, or kill, any game animal, game bird, or fur-bearing animal or fish for, or take, or kill, or possess any fish, or have, keep, possess, sell, purchase, ship, or reship any fur-bearing animal of this state in any manner contrary to the provisions of this act, shall be deemed guilty of a misdemeanor, and upon conviction shall be punished as hereinafter provided; provided, however, that it shall be unlawful and a misdemeanor, punishable as hereinafter provided, for any person between the fifteenth (15th) day of March and the twentieth (20th) day of May, both dates inclusive, of the same year, to catch or attempt to catch, in the waters of this state any fish whatsoever, except when license has been given to seine or net carp, buffalo fish and suckers, provided, however, the fish and game commission shall have the power to change or suspend the closed season on game fish so as to meet local conditions. Provided, also that the commission shall have the power and authority whenever in its opinion conditions warrant it to permit the sale of Rocky Mountain whitefish and Dolly Varden trout under such rules, regulations and conditions as it may prescribe, and also to suspend and set aside the maximum limit of fish of these varieties, one may catch in a single day or have in his possession at one time.

Amd. Sec. 15, Ch. 192, L. 1925; Amd. Sec. 12, Ch. 59, L. 1927.

3695. Private fish ponds—Regulations. Any person who owns or lawfully controls an artificial lake or pond may stock the same with fry procured from the federal or from the state government at the prevail-

ing market price, providing there is a surplus of said fry, or from any other lawful source, and shall thereafter have the right and privilege to take from said lake or pond in any manner, except by the use of poison or explosives, the fish therein contained, and to sell and dispose of said fish and of eggs and fry therefrom. The words "artificial lake or pond" as herein used shall not be construed to include any natural pond or body of water created by natural agencies, but shall be limited only to such bodies of water as are created by the artificial diversion or storage of water and shall not exceed one hundred acres of surface area.

Provided, however, that such owner shall procure a license in the manner provided by the laws of the state of Montana, and shall furnish a good and sufficient bond to the state of Montana, in the sum of two hundred dollars (\$200), conditioned to the effect that he will not sell fish caught in any of the public waters of this state, and also conditioned to the effect that such owner or holder will report to the state game warden the quantity of fish, fish eggs and spawn taken from said lake or pond, and sold from and planted in, said lake or pond during any calendar year. Said report to be made under oath annually in the month of January of each year.

Amd. Sec. 6, Ch. 77, L. 1923.

3696. Open season for elk. The open season for elk shall begin October fifteenth (15th) and end November fifteenth (15th), both dates inclusive, of each year. The closed season for elk shall begin November sixteenth (16th) of each year and end October fourteenth (14th) of the following year, both dates inclusive; provided, however, that in all of that portion of Ravalli county drained by the west fork of the Bitter Root river the open season for elk shall begin with the twentieth (20th) day of September and end with the twentieth (20th) day of October, both dates inclusive, except, however, that the state fish and game commission may in its discretion shorten the open season in such territory in Ravalli county. During the open season for elk it shall be unlawful and punishable as hereinafter provided for any person to shoot, or kill, or take, or cause to be shot, or killed, or taken, more than one (1) elk, or for any person during the closed season for elk, to pursue, hunt, shoot, kill, take or capture or cause to be pursued, hunted, shot, killed, taken, or captured, or attempt to shoot, kill, take, or capture, any elk, or for any person responsible for the death of any elk to wilfully waste any portion or portions of said elk which are suitable for food; provided, also, that it shall be unlawful and a misdemeanor, punishable as in this act provided, for any person at any time to pursue, hunt for, shoot, kill, take, or capture, or cause to be shot, killed, taken or captured, or attempt to shoot, kill, take, or capture, any elk within the counties hereinafter described and which are designated hereby as "preserve for elk," the same to remain closed until opened by the state legislature, or by order of the state fish and game commission, which commission is hereby authorized to provide limited open seasons in such counties and for such areas as in its judgment is warranted and to provide necessary rules and regulations governing such limited open seasons. Provided further that one (1) elk of either sex may be killed in Granite county and in that portion

of Powell county lying south and west of the Deer Lodge river from and including November tenth (10th) to and including November twelfth (12th).

The following named counties, as a whole: Deer Lodge, Fergus, Chouteau, Valley, Golden Valley, Daniels, Roosevelt, Fallon, Wibaux, Richland, Granite, Phillips, Stillwater, Sanders, Silver Bow, Broadwater, Musselshell, Hill, Sheridan, Judith Basin, McCone, Big Horn, Lincoln, Rosebud, Mineral, Beaverhead, Powder River, Garfield, Carbon, Cascade, Meagher, Blaine, Yellowstone, Liberty, Carter, Custer, Prairie, Dawson, Toole, Ravalli, Treasure, Wheatland, Lake, and Sweet Grass.

All of Jefferson county with the exception that said county shall be open from November twelfth (12th) to November fourteenth (14th) both dates inclusive, of each year, to the hunting of bull elk only, carrying visible horns.

All of Lewis and Clark county, except that portion lying and being within the following described boundaries: Beginning at the point where the Big Blackfoot river intersects the county line between Lewis and Clark and Powell counties, running thence up the north bank of the Blackfoot river to the mouth of Cadotte creek, thence up Cadotte creek to the top of the Continental divide, thence northerly along the Continental divide to Scapegoat mountain where the headwaters of the North Fork of the Blackfoot begin, thence down the North Fork of the Blackfoot river to its intersection with the county line between Lewis and Clark and Powell counties, thence along said county line to the point of beginning. In said excepted portion of Lewis and Clark county the open season on elk shall begin November first (1st) and end November fifteenth (15th), both dates inclusive, of each year. Also that portion of Lewis and Clark county lying north of the North Fork of the Dearborn river not including [included] within a game preserve. In said last excepted portion of Lewis and Clark county the open and closed seasons on elk shall be the same as the general open and closed seasons hereinbefore provided.

All of the Missoula and Powell counties, except the drainage area of the Clearwater river and its tributaries and that portion of said counties north of the Big Blackfoot river and east of the drainage area of the Clearwater river and except that portion of Missoula county within the drainage area of Swan river and its tributaries and except that portion of Missoula and Powell counties within the drainage area of the South Fork of Flathead river and its tributaries.

All of Gallatin county shall be open to elk hunting except that portion lying north of the township line between townships three (3) and four (4) north.

Provided further, that nothing herein shall be construed to authorize the hunting of game of any kind within the Spotted Bear game preserve, Sun River game preserve, or the Gallatin game preserve, or any other game preserve or refuge now established or which may hereafter be established by the state legislature or by orders of the fish and game commission, except the Highwood National Forest game preserve, which the state game and fish commission may open, for a limited season, for

the hunting of game as in its judgment is warranted, and to provide necessary rules and regulations governing such limited open season.

Provided further, that elk may be killed as provided herein, in county of Park from and including October fifteenth (15th) to and including the twentieth (20th) day of December of any year, except that the state fish and game commission shall, in its discretion, have power to shorten such season and declare said Park county closed to the hunting or killing of elk at any time during the open season in Park county, upon giving no less than five (5) days' notice thereof by publishing such notice in at least one (1) newspaper of general circulation published in said Park county, which said publication shall be at least five (5) days prior to the time fixed by such commission for the closing of such season. And provided further, that it shall be unlawful and a misdemeanor, punishable as in the section provided, for any person to shoot or kill or attempt to shoot or kill any elk in Park county between the hours of five (5) P. M. of any day and eight (8) A. M. of the following day, mountain time. Any person violating any of the provisions of this section or any of the orders of the fish and game commission relating hereto shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine or not less than two hundred dollars (\$200) nor more than five hundred dollars (\$500) or by imprisonment in the county jail for not less than thirty (30) days or not more than six (6) months, or by both such fine and imprisonment.

Amd. Sec. 16, Ch. 192, L. 1925; Amd. Sec. 13, Ch. 59, L. 1927.

Cited in *Rosenfeld v. Jakways et al.*, 67 Mont. 558, 563, 216 Pac. 776.

3697. Open season for deer. The open season for deer shall begin October 15th and shall end November 15th, both dates inclusive, of each year. The closed season for deer shall begin November 16th of each year and end October 14th of the following year, both dates inclusive; provided, however, that in all of that portion of Ravalli county drained by the west fork of the Bitter Root river, the open season for deer shall begin with the twentieth (20th) day of September and end with the twentieth (20th) day of October, both dates inclusive, of each year, and provided further, however, that it shall be unlawful and a misdemeanor, punishable as in this act hereinafter provided, for any person to shoot, hunt, kill, take or capture, or cause to be shot, killed, taken or captured, any deer, at any time within the counties of Yellowstone, Rosebud, Custer, Musselshell, Powder River, Carter, Richland, Roosevelt, McCone, Dawson, Carbon, Teton, Phillips, Prairie, Garfield, Treasure and Valley, and within all of that portion of Fergus county lying north of the township line between townships eighteen (18) and nineteen (19) and east of the range line between ranges twenty-four (24) and twenty-five (25) in said county, also all of Glacier and Pondera counties lying within the Lewis and Clark National Forest; and also all of that portion of Gallatin county lying and being north of the south line of township four (4), north, M. P. M.

During the closed season for deer it shall be unlawful for any person to take, hunt, shoot, kill or capture, or cause to be taken, hunted, shot, killed or captured any deer; during the open season for deer it shall be unlawful for any person to shoot or kill or cause to be shot or killed

any deer other than one (1) male deer with horns not less than four (4) inches in length above the top of the skull. Provided, however, that it shall not be unlawful to take one deer of either sex in Mineral, Beaverhead, Madison, Glacier, Lake, Flathead, Lincoln, Sanders, and Ravalli counties. It shall also be unlawful and a misdemeanor punishable as in this act hereinafter provided, for any person responsible for the death of any deer to wilfully waste any portion or portions of said deer suitable for food.

Any person violating any of the provisions of this act shall be guilty of a misdemeanor and upon conviction thereof shall be punished as in this act hereinafter provided.

Amd. Sec. 8, Ch. 77, L. 1923; Amd. Sec. 17, Ch. 192, L. 1925; Amd. Sec. 13a, Ch. 59, L. 1927.

3698. Destroying evidences of sex, a misdemeanor. Any person killing any deer within this state who shall destroy such evidence of the sex of the deer so killed, as to make the determination of the sex thereof uncertain, shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished as in this act hereinafter provided.

Amd. Sec. 18, Ch. 192, L. 1925.

3699. Closed season for Rocky mountain sheep and goats. The entire state of Montana is hereby closed to the shooting, killing, taking, or capturing of any Rocky mountain sheep or goats; provided, however, that the state fish and game commission shall have the jurisdiction, power, and authority to open for limited periods of time any county in the state or any portion thereof to the shooting, killing, taking, or capturing of any Rocky mountain sheep or goats, and to establish bag limits. During the closed season for said Rocky mountain sheep or goats herein named, which said closed season shall be all of that season or period of the year and not declared and ordered open by said commission, it shall be unlawful, and a misdemeanor for anyone to shoot, kill, take, or capture or cause to be shot, killed, taken, or captured any of the Rocky mountain sheep or goats of this state, and anyone violating any of the provisions of this section or the orders, rules, or regulations of the commission relating hereto shall be guilty of a misdemeanor and upon conviction thereof shall be fined by a fine of not less than fifty dollars (\$50) and not more than five hundred dollars (\$500), or not less than ten (10) days' imprisonment in the county jail nor more than ninety (90) days' imprisonment in the county jail, or by both such fine and imprisonment.

Amd. Sec. 9, Ch. 77, L. 1923; Amd. Sec. 19, Ch. 192, L. 1925.

Cited in *Rosenfeld v. Jakways et al.*, 67 Mont. 558, 563, 216 Pac. 776.

3700. Closed season for certain game birds. Any person who, at any time within this state, hunts, shoots, kills, captures, or causes to be shot, killed or captured, or attempts to shoot, kill, or capture any quail, Chinese or Mongolian pheasants, commonly called ringneck pheasants, Hungarian partridge, ptarmigan or wild turkey, or has in his possession any of such birds or any part of any such birds, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of

not less than fifty dollars (\$50), nor more than two hundred fifty dollars (\$250), or by imprisonment in the county jail for not more than sixty (60) days, or by both such fine and imprisonment, provided that the commission shall have the jurisdiction, power, and authority to open for limited periods of time, any county in the state or any portion thereof, to the hunting, shooting, killing, taking, or capturing of any of the birds herein mentioned, when in its opinion, conditions will justify the same, and to declare the number and sex of birds to be taken, killed, or possessed in any one day of said open season or for the entire open season so created by said commission.

Amd. Sec. 10, Ch. 77, L. 1923; Amd. Sec. 20, Ch. 192, L. 1925; Amd. Sec. 14, Ch. 59, L. 1927.

Cited in *Rosenfeld v. Jakways et al.*, 67 Mont. 558, 563, 216 Pac. 776.

3701. Open and closed seasons for grouse. The open season for sharp-tailed grouse, blue grouse, fool-hen, ruffed grouse commonly called pheasant or partridge, prairie chicken, sage-hen or sage grouse, shall begin on the sixteenth (16th) day of September and end on the twenty-fifth (25th) day of September of the same year, both dates inclusive. The closed season for the game birds named herein shall begin on the twenty-sixth (26th) day of September of each year and end on the fifteenth (15th) day of September of the following year, both dates inclusive. During the open season for the game birds named herein it shall be unlawful and a misdemeanor, punishable as hereinafter provided, for any person in any portion of the state of Montana to shoot, kill or capture, or take, or cause to be shot, killed, or captured, or taken, more than five (5) sharp-tailed grouse, blue grouse, fool-hen, ruffed grouse commonly called pheasant, or partridge, prairie chicken, sage-hen or sage grouse, in the aggregate of all kinds in any one day; it shall be unlawful and a misdemeanor, punishable as hereinafter provided, for any person to have in his possession more than five (5) of any such birds in the aggregate of all kinds at any one time. During the closed season for the game birds herein named it shall be unlawful and a misdemeanor, punishable as hereinafter provided, to shoot, kill or capture, take or cause to be shot, killed or captured, or taken, any of the game birds named herein, provided, however, that the commission shall have the power to advance the date of the open season on sage grouse in any county of this state when said commission feels convinced that such change is necessary and meets with the approval of the sportsmen and property owners in such community, provided the notice of opening of a particular county or part thereof shall be advertised in a newspaper of that county at least ten (10) days prior to such opening date.

Amd. Sec. 11, Ch. 77, L. 1923; Amd. Sec. 21, Ch. 192, L. 1925; Amd. Sec. 15, Ch. 59, L. 1927.

3702. Power to open and close game districts.

Rep. Sec. 32, Ch. 192, L. 1925.

3703. Closed season and bag limits on migratory game birds. Any person who, during the period beginning the first (1st) day of January of any year and the fifteenth (15th) day of September of the same year,

both dates inclusive, hunts, kills or captures, or causes to be shot, killed or captured, or attempts to shoot, kill or capture any wild ducks, wild geese, brant, Wilson snipe or jacksnipe, greater or lesser yellow-legs, coot or gallinule, or who during the period beginning the first (1st) day of December of any year and the fifteenth (15th) day of September of the following year, both dates inclusive, hunts, kills, or captures, or attempts to shoot, kill or capture any sora or other rail, except coot and gallinule, or who in any one day during the open season shoots, kills or captures, or causes to be shot, killed or captured more than twenty-five (25) wild ducks (other than wood duck and eider duck) in the aggregate of all kinds, eight (8) wild geese in the aggregate of all kinds, eight (8) brant, twenty (20) Wilson or jacksnipes, twenty-five (25) rails and gallinules, in the aggregate of all kinds, but not more than fifteen (15) of any one species, twenty-five (25) sora, twenty-five (25) coot, fifteen (15) greater and lesser yellow-legs in the aggregate of both kinds, or who hunts, shoots at, captures, kills, or attempts to capture or kill any migratory birds on any day except from half an hour before sunrise to sunset during the open season prescribed therefor, or who at any time of year hunts, shoots, kills or captures, or causes to be shot, killed or captured any little brown sandhill and whooping cranes, swan, woodcock, avocet, curlew, dowitcher, godwit, knot, plover, killdeer, sandpiper, willet, or other shore bird except greater and lesser yellow-legs, Wilson snipe or jacksnipe, or who shall possess any wild duck, wild goose, brant, Wilson or jacksnipe, greater or lesser yellow-legs, coots or gallinule, during the period beginning the eleventh (11th) day of January of any year and the fifteenth (15th) day of September of the same year, both dates inclusive, or who shall possess any sora or other rail, (except coot and gallinule), during the period beginning the eleventh (11th) day of December of any year and the fifteenth (15th) day of September of the following year, both dates inclusive, shall be guilty of a misdemeanor and upon conviction shall be punished as hereinafter provided.

The fish and game commission is hereby authorized and empowered to make such changes in the provisions of this section as shall be necessary to make said provisions conform at all times to the regulations of the United States department of agriculture pertaining to all and any of the migratory birds named herein.

Amd. Sec. 13, Ch. 77, L. 1923; Amd. Sec. 16, Ch. 59, L. 1927.

3704. Closed and open seasons for fur-bearing animals. Any person who between the fifteenth (15th) day of April of any year and the first (1st) day of December of the same year, shoots, traps, kills or captures, or causes to be shot, trapped, killed or captured, or attempts to shoot, trap, kill or capture any marten or sable, otter, fox, mink, muskrat, raccoon or fisher, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished as in this act hereinafter provided. Provided, however, that when it is shown that muskrats are doing severe injury upon, or are a menace to the structures, canal banks or other works of an irrigation project or district, any resident land owner on such project or district may kill or trap or cause to be killed or trapped any muskrat upon or in menacing proximity to the structures, canal banks or other

works of such project or district during the closed season on muskrats, after having secured from the state fish and game warden a permit so to do, except that from June first (1st) to August thirty-first (31st), both dates inclusive, of each year, no such permit shall be required. The furs and hides of such animals, legally taken during the open season, may be possessed, bought and sold at any time.

It shall be unlawful and a misdemeanor, punishable as in this act hereinafter provided, for any person to shoot, trap, kill or capture, or cause to be shot, trapped, killed or captured, or to attempt to shoot, trap, kill or capture any otter, raccoon, marten or sable, until such time as the commission shall provide an open season on marten or sable, otter, or raccoon, and any person violating any of the provisions hereof shall be guilty of a misdemeanor and upon conviction thereof shall be punished as in this act hereinafter provided.

It shall be unlawful and punishable as in this act hereinafter provided, for any person at any time to wilfully destroy, open or leave open, or partially destroy, the house of any muskrat or beaver.

The open season on fur-bearing animals shall begin on December first (1st) of each year and end on April fifteenth (15th) of the following year, both dates inclusive.

Amd. Sec. 14, Ch. 77, L. 1923; Amd. Sec. 22, Ch. 192, L. 1925; Amd. Sec. 17, Ch. 59, L. 1927.

3706. Penalties. Any person found guilty of a violation of any of the terms of this act, or of any other violations of the state fish and game laws of the state of Montana, or of the rules, regulations or orders of the commission, if the same is defined as a misdemeanor under the terms hereof, shall, unless the punishment is otherwise defined and set forth, be punished by a fine of not less than twenty-five dollars (\$25), nor more than five hundred dollars (\$500), or by imprisonment in the county jail for not less than ten (10) days, nor more than one hundred eighty (180) days, or by both such fine and imprisonment, and in addition thereto, shall, in the discretion of the court, forfeit his license to hunt, fish or trap within this state for a period of one (1) year from date of conviction.

Amd. Sec. 23, Ch. 192, L. 1925.

3707. Compensation of persons issuing licenses. Any person hereby authorized to issue licenses of any kind, except duly appointed game and deputy game wardens, shall receive as compensation for issuing such license a sum of ten cents (\$0.10) for each license so issued. Said compensation to be by such person retained out of each license fee as reported in the manner herein provided for reports of persons authorized to issue licenses.

Amd. Sec. 15, Ch. 77, L. 1923.

3714. Catching fish except with pole, line and hook—Use of traps, nets and seines except as provided in section 12 of this act. Every person who takes or catches fish in any of the waters of this state except with hook and line held in hand or line and hook attached to rod or pole held in hand, or who takes or catches fish with hook baited with any poisonous

substance or by means of the use of any poisonous substance, including fish berries, or who takes or catches fish by means of the use of fish traps, grab-hooks, seines, nets or other similar means for catching fish, shall be guilty of a misdemeanor and upon conviction thereof, shall be punished as provided for in section 3706 of the Revised Codes of Montana, 1921, and the amendments thereto; provided, however, that the Montana fish and game commission shall have the power, authority, and jurisdiction, to designate such waters within the state of Montana, wherein, in the judgment of the members of said commission, traps, seines, or nets may be used for the taking of nongame fish and Dolly Varden trout, and to close such waters so designated at the discretion of the commission, and to permit the taking of black bass in Flathead lake, the taking of all fish by said means in said waters when so designated to be done under such rules and regulations as said commission may prescribe with reference thereto, and under the supervision of said commission, and all such fish so taken may be possessed and sold in such manner and under such restrictions as said commission may direct, all fish other than those herein designated so taken under said rules and regulations when prescribed by said commission, shall be returned uninjured to the waters from which they were taken.

Amd. Sec. 16, Ch. 77, L. 1923; Amd. Sec. 25, Ch. 192, L. 1925; Amd. Sec. 18, Ch. 59, L. 1927.

3717. Use of explosives or poison prohibited. If any person or persons shall use any giant powder or other explosive compounds, or any corrosive narcotic poison, or other deleterious substance for the purpose of catching, stunning, or killing fish, he shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than one hundred dollars (\$100), nor more than five hundred dollars (\$500), or by imprisonment in the county jail for a term of not less than thirty (30) days, nor more than six (6) months, or by both such fine and imprisonment.

Amd. Sec. 24, Ch. 192, L. 1925.

3720. Chasing big game with dogs a misdemeanor.

Rep. Sec. 32, Ch. 192, L. 1925.

3721. Catching, trapping or otherwise restraining big game a misdemeanor.

Rep. Sec. 32, Ch. 192, L. 1925.

3722. Protection of beaver—Beaver license. No person shall take, trap, kill, capture or attempt to take, trap, kill or capture, or in any way destroy any beaver in the state of Montana, or possess, buy, sell, ship or transport within or without the state, or cause the same to be done, any beaver or any part thereof including skins or hides and castors, whether taken within or coming from without the state, except as herein-after permitted.

Provided that upon payment of a fee of ten dollars (\$10) the state fish and game warden may issue a permit to any bona fide owner or lessee

of real estate which is being actually and materially damaged by beaver, to take or destroy beaver on his own premises only, and provided that the warden shall, when issuing the permit mentioned, designate therein the maximum number of beaver that may be taken or destroyed under such permit. All applications for beaver permits shall be filed with the state fish and game warden, between the dates of May first (1st) and November thirtieth (30th) of each year. The term "premises" shall be construed to include any irrigation ditch or right of way appurtenant to the land for which said license or permit is issued.

That the state fish and game warden shall in person or by deputy examine the premises and investigate the alleged damage by beaver before issuing a license or permit.

Any person trapping beaver under a license or permit of the state fish and game warden shall properly care for all skins of beaver taken thereunder and as soon as cured shall send them to the state fish and game warden with a report giving permit number and the place and date of capture. The state fish and game warden or his deputy, if satisfied of the legal taking thereof, shall securely attach a numbered metal tag to each skin so received. A record of all skins so tagged shall be kept by the state fish and game warden which shall show the license number under which the skins were caught, the name and address of the permittee, and the number of the tag fastened to each skin. The skin or skins shall then be returned to the owner, who shall pay all transportation charges both ways and shall pay to the state fish and game warden fifty cents (\$.50) for each skin so tagged.

Any person who shall receive or bring in from without the state any beaver skin or skins shall report their arrival in the state within three days to the state fish and game warden and furnish an affidavit setting forth the number of skins, the date of receipt, the name and address of the person from whom procured, the manner or method of transportation into the state, and shall forward said beaver skin or skins together with the aforesaid affidavit to the state fish and game warden. The state fish and game warden shall forthwith cause such skins, if found to have been lawfully caught or killed outside the state and lawfully exported to the state of Montana, to be tagged with distinctive numbered metal tags securely attached thereto upon payment of a fee of fifty cents (\$.50) for each skin so tagged, and a state fish and game warden shall keep a record of all skins so tagged.

The said metal tag shall remain attached to the beaver skin to which it was originally affixed by the state fish and game warden or his deputy until it is dressed and manufactured into an article of commerce, or it shall accompany any skin shipped or transported out of the state. It shall be a misdemeanor, punishable as hereinafter provided, to remove a tag from such skin, to duplicate or reproduce such tags for fraudulent purposes or use contrary to the provisions of this act, or to misuse any tag detached from the skin to which it was originally attached by the said state fish and game warden or his deputy.

Beaver skins, taken within the state under permit, and those coming from without the state, tagged as herein provided, may be possessed, bought, sold or transported at any time within the state of Montana, but

no beaver skin or skins may be exported in any manner from the state without the shipper first obtaining an export or shipping permit from the state fish and game warden, which may be issued upon application showing the kind and number of the metal tags on said skins and the payment of a fee of fifty cents (\$.50) for the permit for each shipment.

Any package offered for transportation from the state which contains a beaver skin or skins shall be clearly marked on the outside thereof with the names and addresses of the consignor and the consignee, the number and kind of skins contained therein, and the number of the shipping permit. The taking and sale of live beaver under permit issued by virtue of the provisions of this section shall be regulated by the fish and game commission, and the license fee to be charged for sale of live beaver shall be three dollars (\$3) for each beaver sold, provided that live beaver shall be sold only to those who hold a license for the purpose of the propagation of fur-bearing animals in this state.

Any person who shall violate any of the provisions of this section shall be guilty of a misdemeanor and upon conviction shall be punished as hereinafter provided, and any beaver skin or skins taken or found in this state or which have been shipped out of the state except as specifically permitted by this section are hereby declared contraband and shall be seized by the state fish and game warden, deputy or other officer authorized to enforce the provisions of this act. All skins so seized shall be marked or tagged for identification and sold by the state fish and game warden to the best advantage, and the proceeds therefrom turned into the state treasury to be credited to the fish and game fund.

Beaver trapping permits issued under the provisions of this act shall expire May first (1st) of each year and all beaver skins taken thereunder and not reported and tagged according to the provisions of this section prior to July first (1st) following shall be subject to seizure and sale as herein provided.

Amd. Sec. 15, Ch. 77, L. 1923; Amd. Sec. 19, Ch. 59, L. 1927.

Under this section, prohibiting the killing of beaver except as therein provided, and section 3725, making possession of certain wild animals or parts thereof prima facie evidence that the

possessor killed the same, private ownership of beaver pelts is not a matter of common right, but may be acquired only by compliance with the restrictions, and then such ownership is qualified. *Rosenfeld v. Jakways et al.*, 67 Mont. 558, 216 Pac. 776.

3723. Penalty for killing or shipping birds without permit—Exception.

Any person who at any time shall hunt, capture, kill, possess, purchase, offer or expose for sale, ship, transport or cause to be shipped or transported any wild bird other than a game bird, or any part of the plumage, skin or body of any such bird, irrespective of whether said bird was captured or killed within or without the state, or take or destroy the nest or eggs of any such wild bird, except under a certificate or permit issued by the state fish and game warden, shall be guilty of a misdemeanor and upon conviction thereof shall be punished as hereinafter provided; provided, however, that the provisions of this section shall not apply to the hunting, trapping or killing of English sparrows, crows, eagles, hawks, snow owls, great gray owls, great horned owls, blackbirds, kingfishers, magpies and

jays and such other birds as the fish and game commission shall designate, or the taking or destruction of their nests and eggs.

Amd. Sec. 18, Ch. 77, L. 1923; Amd. Sec. 20, Ch. 59, L. 1927.

3725. Possession of game as evidence. The possession of dead bodies, or any part thereof, or any of the game fish, game or nongame birds, game or fur-bearing animals defined by the fish and game laws of the state of Montana, shall be prima facie evidence that such person or persons in whose possession the same are found have killed, caught, or taken the same, and the possession of a fishing rod and line on the banks or shores of a stream or lake shall be prima facie evidence that the person or persons in whose possession the same are found was using the same to fish.

Any person who shall possess, have or hold, or purchase, or keep in storage, or possess for any other purpose, any game fish, game bird, nongame bird, game animal, fur-bearing animal, or parts thereof, which shall have been lawfully killed, captured or taken, or who shall unlawfully use any fishing rod and line, or fishing line, shall be guilty of a misdemeanor punishable as hereinafter provided.

Amd. Sec. 26, Ch. 192, L. 1925; Amd. Sec. 21, Ch. 59, L. 1927.

Under this section and section 3722, private ownership of beaver pelts is not a matter of common right, but may be

acquired only by compliance with the restrictions, and then such ownership is qualified. *Rosenfeld v. Jakways et al.*, 67 Mont. 558, 216 Pac. 776.

3726. Sale of confiscated birds and animals.

Cited in *Rosenfeld v. Jakways et al.*, 67 Mont. 558, 564, 216 Pac. 776.

3727. Certificate of sale. Upon the sale of such property, the officer shall issue a certificate to the party purchasing the same, certifying that the purchaser has the legal right to be in possession of the same, and anyone so acquiring said property from the state shall have the right to deal therewith without further question with respect to violation of the law, anything herein to the contrary notwithstanding.

Amd. Sec. 27, Ch. 192, L. 1925.

Cited in *Rosenfeld v. Jakways et al.*, 67 Mont. 558, 564, 216 Pac. 776.

3730. Removal of game from state. It is hereby declared to be unlawful and a misdemeanor, punishable as hereinafter provided, for any person or persons to ship or take out of the state any of the game or nongame birds, fish, game animals, fur-bearing animals, or the skins of fur-bearing animals, or any parts thereof, which are mentioned in this act whether taken within or coming from without the state, except the same be done in the manner provided for by sections 3730, 3731, and 3732 of the Revised Codes of Montana as amended by this act.

Amd. Sec. 19, Ch. 77, L. 1923; Amd. Sec. 22, Ch. 59, L. 1927.

3731. Permit to remove game from state. Any resident of this state who desires to ship out of the state any game animals, game or nongame birds, fish, fur-bearing animals, or the skins of fur-bearing animals, or parts thereof, legally taken or killed in the state during the open season

therefor, or coming from without the state, shall first procure a permit from the state fish and game warden, said permit stating the name of the consignee and consignor, destination and number and kind of game or nongame birds, game animals, fish, fur-bearing animals, or the skins from fur-bearing [animals] or parts thereof, that is to be shipped, and said permit shall be presented to the transportation company with consignment.

Amd. Sec. 20, Ch. 77, L. 1923; Amd. Sec. 23, Ch. 59, L. 1927.

3732. Nonresident's permits to ship game from state. Any nonresident of this state who has procured a proper license to hunt or fish within this state, and who desires to ship out of the state any of the game animals, game birds, fish, or any part thereof, taken or killed by him during the open season for killing the same, the same having been killed lawfully, shall present to the transportation company his license with the consignment of game or fish to be shipped, provided, that no person shall ship in one year more game or fish than it is lawful for one person to kill in a single open season. Provided that any nonresident who desires to ship or take out of the state, any fur-bearing animal, or the skins from fur-bearing animals, or parts thereof, legally acquired, shall first procure a permit from the state fish and game warden, said permit stating the name of the consignee and the consignor, destination and number and kind of fur-bearing animals, or the skins from fur-bearing animals that are to be shipped and said permit shall be presented to the transportation company with the consignment.

Amd. Sec. 21, Ch. 77, L. 1923; Amd. Sec. 24, Ch. 59, L. 1927.

3733. Labeling of packages. All shippers of fish, game or nongame birds, game animals, fur-bearing animals, or the skins of fur-bearing animals or predatory animals, or parts thereof, are hereby required to label all packages offered for shipment by parcel post, common carrier or otherwise, such label to be securely attached to the address of the package and plainly indicate the names and addresses of the consignor and consignee and the complete contents of said package. All persons violating any of the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction shall be punished as hereinafter provided.

Amd. Sec. 22, Ch. 77, L. 1923; Amd. Sec. 28, Ch. 192, L. 1925; Amd. Sec. 25, Ch. 59, L. 1927.

3734. Carriers' rules—Confiscation. No person or persons, or the agent or employee of any common carrier, association, stage, express, railway or transportation company shall transport or receive for transportation or carriage or sell or offer for sale any of the game animals, game or nongame birds, fish, fur-bearing animals, or the skins of fur-bearing animals, or parts thereof, except as specifically provided for by this act, and all game or nongame birds, fish, game animals, or fur-bearing animals, or parts thereof had in possession, or which have been shipped or are being transported in violation of any of the provisions of this act, shall be seized, confiscated, and disposed of as provided by law. Any person violating any of the provisions of this act shall be guilty of a misdemeanor and punished as hereinafter provided.

Amd. Sec. 26, Ch. 59, L. 1927.

3735. Penalty. Any person or person [persons] or the agent of any state, express, or railway company, or association or persons who shall receive, for transportation or carriage, or shall sell or offer for sale any of the game fish that have been taken or killed contrary to the provisions of this act, knowing or having reason to know or believe that such fish were so illegally caught, taken or killed, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished as in this act provided; provided, however, that any person having in his possession a fishing license for the current year may ship not to exceed twenty (20) pounds and one fish of the varieties in this act designated as game fish, by express, stage, or freight, upon showing said license to any such common carrier or to the agent thereof.

Amd. Sec. 29, Ch. 192, L. 1925.

3736. Fee for shipping permits. The state fish and game warden shall make a charge of fifty cents (\$.50) for each and every shipping permit issued by him for the shipment of game or nongame birds, fish, game, animals, or fur-bearing animals, or parts thereof, out of the state. All money so received shall be turned over by him to the state treasurer at the time and in the manner provided by law, and the state treasurer shall place such money to the credit of the state fish and game fund.

Amd. Sec. 27, Ch. 59, L. 1927.

3741. Definitions. In the construction of this act the words "game" and "game birds" or parts of the same, shall be construed to mean the game animals and game birds, the killing of which is restricted or forbidden by the laws of Montana; and the words "merchant," "hotel and restaurant-keeper," shall include each and every manager, servant, agent, and employer of such person.

Amd. Sec. 30, Ch. 192, L. 1925.

3742. Penalty for unlawful possession and shipment—Scientific or propagating purposes excepted. It is hereby made unlawful for any person to purchase, sell, offer to sell, possess, ship, or transport within or out of the state any game fish, wild bird, game or fur-bearing animal or part thereof, protected by the laws of this state, or coming from without the state, whether belonging to the same or different species from that native of the state of Montana, except as specifically permitted by this act. The provisions of this section shall not apply to the plumage of wild water-fowl lawfully killed when purchased or sold for other than millinery purposes, or to birds or animals collected or possessed under a permit issued by the proper state fish and game warden for scientific or propagating purposes, nor shall the provisions of this section be construed to prohibit the purchase, sale or offering for sale, shipping, transporting, or possession for sale, any head, skin, or scalp, mounted or unmounted, or any full-sized mount of any game animal lawfully killed, provided the seller, before selling any such specimen shall first obtain from the state fish and game warden a permit authorizing him to sell it, nor to the sale of fur-bearing animals, or the skins of fur-bearing animals,

except untagged beaver skins, nor to the export of fur-bearing animals or the skins of fur-bearing animals under proper permit of the state fish and game warden. Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor and on conviction thereof shall be punished as hereinafter provided.

Amd. Sec. 23, Ch. 77, L. 1923; Amd. Sec. 28, Ch. 59, L. 1927.

3742.1. Penalties. Any person found guilty of a violation of the terms or provisions of this act, shall be punished in the manner provided by section 3706 of the Revised Codes of Montana of 1921, as amended by chapter 192 of the Nineteenth Legislative Assembly, of the state of Montana of 1925.

En. Sec. 29, Ch. 59, L. 1927.

3742.2. Effect partial invalidity act. If any section, subsection, sentence, clause or phrase of this act is for any reason held to be unconstitutional or inoperative, such decision shall not affect the validity of the remaining portions of this act.

En. Sec. 31, Ch. 59, L. 1927.

3744. Transportation or sale of fish or game by carriers.

Rep. Sec. 30, Ch. 59, L. 1927.

3745. Guides must have licenses. No person shall engage in the business of guiding, as the term is commonly understood, without first having procured from the state fish and game warden a guide's license. Any competent person, who is a bona fide citizen of the state of Montana shall upon the presentation of an affidavit, stating that the applicant is of good moral character and responsible, and signed by three taxpayers of the county in which the applicant lives; and by the applicant making the payment of ten dollars (\$10) to the state game warden, receive from said state game warden a guide's license, which shall be good for one year only; provided that upon the payment of ten dollars (\$10) annually said license may be renewed. Such license shall state the name, age, and place of residence of the holder, and shall further recite that the holder of such license is a person of good moral character.

Amd. Sec. 17½, Ch. 77, L. 1923.

3751. Taxidermists to procure license. Any person who shall engage in, or who is at the present time engaged in conducting any taxidermist business, as the term is generally understood, or any person who conducts a business for the purpose of mounting, preserving or preparing any of the dead bodies of any birds, or animals, or any part thereof, mentioned in the game laws of this state, must first obtain from the state fish and game warden a taxidermist's license, and shall pay an annual license fee of fifteen dollars (\$15) therefor. Such person shall, on the first day of each month, make a written report to the state fish and game warden, of all the articles of game, the kind and number of each, by whom owned, and the residence of owner, received during the past month, also of all the articles of game shipped and to whom and where shipped during the last month;

also the amount and kind of each on hand on the last day of the month, and by whom owned and owner's address. Any person violating the provisions hereof shall be deemed guilty of a misdemeanor and upon conviction shall be punished accordingly, and in all cases of conviction their licenses shall be revoked.

Amd. Sec. 24, Ch. 77, L. 1923.

3752. Failure to procure license or make report a misdemeanor.

Rep. Sec. 26, Ch. 77, L. 1923.

3753. Disposition of fines, bonds and penalties. All fines, bonds, and penalties mentioned in any section of this act may be collected by civil action in the name of the state of Montana in any court of competent jurisdiction upon proper complaint being filed, and the amount of all fines and bonds collected under the provisions of this act shall be paid to the state game warden, and by him paid to the state treasurer and by him placed to the credit of the fund to be known as the fish and game fund. All such fines, bonds and costs shall be collected without stay of execution, and the defendant, or defendants, may by order of the court be confined in the county jail of the county until such fine and costs are served out at the rate of \$2 per day.

Amd. Sec. 25, Ch. 77, L. 1923.

3764. Boundaries Gallatin game preserve—Penalty for hunting. The boundaries of Gallatin game preserve are hereby established as follows: "Commencing at the southeast corner section 19, T. 9 S., R. 8 E., which section corner is on line with the north boundary of the Yellowstone National Park, thence north one mile along east line of said section, thence west one mile, thence north one mile, thence west two miles, thence north three miles, thence west two miles, thence north two miles to the section corner common to sections 16-17-20 and 21, T. 8 S., R. 7 E., which corner is on the divide between Cottonwood creek and Sphinx creek, thence west along said divide to the northwest corner of section 19, T. 8 S., R. 7 E., thence south and west along the divide between Tom Miner creek, Mol Heron and Specimen creeks to a point on the Gallatin-Yellowstone divide, which point is north 60° E., 45 chains from the southwest corner of section 27, T. 8 S., R. 5 E.; thence in a general southwesterly direction, following the top of the divide between Daly and Teepee creeks and Buffalo Horn creek a distance of approximately four and one-half miles, to a point on this divide where the township line, between townships 8 and 9 S., R. 4 E., crosses said divide, which point is 20 chains due west from the southeast corner of section 36, T. 8 S., R. 4 E., M. M.; thence due west along the township line between townships 8 and 9 S., R. 4 E., a distance of approximately one and three-fourths miles to a point on the east bank of the Gallatin river, where the township line between townships 8 and 9 S., R. 4 E., M. P. M. intersects the said river, thence in a southeasterly direction along the east bank of the Gallatin river to a point where the north section line of section 18, T. 9 S., R. 5 E. intersects the Gallatin river, thence due west along said section line and south section lines of sections 11 and 12, T. 9 S., R. 4 E. to a point where said section lines intersect

Sage creek, thence up the east bank of Sage creek to the confluence of Big Sage creek and Little Sage creek, thence south along the divide between the above-mentioned creeks to Sage mountain, which is on the divide between Sage creek and Cabin creek, thence east along said divide to the divide between Cabin and Teepee creeks, thence south along said divide to the divide between Teepee creek and Red Canyon creek, thence south along said divide to the northwest corner of T. 12 S., R. 5 E., thence south a distance of two miles along the west line of said township, thence east a distance of approximately four miles to the west boundary of the Yellowstone National Park to the northeast corner of said Park, thence east along the north boundary of said National Park to the place of beginning.

It shall be unlawful for any person to hunt for, trap, capture, kill or take or cause to be hunted for, trapped, or killed, any game animal or fur-bearing animal or birds of any kind whatever, within the limits of said preserve or to carry or to discharge any firearms, or to create any unusual disturbance tending to, or which may frighten or drive away any of the game animals or birds, or to chase the same with dogs or hounds in said preserve; provided, however, that permits to capture animals or birds for the purpose of propagation, or for scientific purposes, or to trap fur-bearing animals, or to destroy mountain lions, wolves, foxes, coyotes, wildcats, mink or other predatory animals or birds, or for carrying firearms, may be issued by the state game warden, upon the payment of such fee, and in accordance with such regulations as may be established for said preserve by the state game and fish commission. Any person violating any of the provisions of this act shall be guilty of misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than twenty-five (\$25) dollars, nor more than one hundred (\$100) dollars or by imprisonment in the county jail for not less than thirty (30) days nor more than six (6) months, or by both such fine and imprisonment.

Amd. Sec. 1, Ch. 80, L. 1925.

3777. License for breeding and propagating game birds, game and fur-bearing animals. It shall hereafter be lawful for any person or persons, company, or association to engage in the business or occupation of propagating, owning and controlling wild game birds, game and fur-bearing animals of the state of Montana, upon premises wholly owned, leased or controlled by such person or persons, company or association in said state of Montana, under such regulations as may be prescribed by the fish and game commission, and the supervision of said state fish and game warden, upon payment of an annual fee of five dollars (\$5) any applicant shall file with the commission, a statement of the place where he will conduct such business, and game and fur proposed to be raised on said premises, and shall for this purpose obtain a permit from the fish and game commission, which permit shall be issued by said commission, to capture alive in season or out of season such game birds, or game or fur-bearing animals as may be necessary for foundation stock for such game or fur farm. Such permit, however, shall limit the number of game birds or game or fur-bearing animals that may be so captured; the applicant shall be required to show that he has so fenced the place where such game or fur farm is located that no wild or public animal or bird can

mix with those confined by him and when license has been issued and a permit has been given to capture certain fur-bearing animals for foundation stock, said animals shall be subject to the same royalty or tax as the skins of the same animals are subject to. When the provisions of this section have been complied with the product of such game or fur farm may be dealt with and sold as private property, but every sale must be reported to the state game warden, and he shall make an annual report of his said game or fur business to the fish and game commission.

Any person or person [persons] who at any time hereafter, in any part of the state of Montana, without the consent of the owner or caretaker of any inclosure within which fur-bearing animals are kept for breeding purposes, and on the fence of which inclosure are kept posted notices forbidding trespassing on the premises where the said animals are kept, and plainly discernible at a distance of not less than twenty-five yards therefrom, shall pass within the said fence or such inclosure or climb over, break or cut through the same for the purpose of entering the said inclosure, or for any other purpose whatsoever, shall be guilty of an offense and liable to the penalty hereinafter provided.

Amd. Sec. 31, Ch. 192, L. 1925.

3777.1. Effect partial invalidity act. If any section, subsection, sentence, clause, or phrase of this act is for any reason held to be unconstitutional or inoperative, such decision shall not affect the validity of the remaining portions of this act.

En. Sec. 33, Ch. 192, L. 1925.

3778.1. Wolf Creek game preserve—Limits. For the better protection and propagation of game animals and birds, the following described area in Lincoln county, state of Montana, is hereby set aside and established as a state game preserve, to be known as the Wolf Creek game preserve:

Beginning at the northeast corner of township thirty-one (31) north, range twenty-six (26) west, in Lincoln county; running thence west to the summit of the divide between the Flathead river and the Kootenai river known as Pinkham ridge; thence southerly along the summit of said divide to the south line of township thirty (30) north; thence east along the said township line to the southeast corner of township thirty (30) north, range twenty-six (26) west; thence north along the Horse Plains Guide Meridian, which is the line between Flathead and Lincoln counties to the point of beginning.

En. Sec. 1, Ch. 7, L. 1923.

3778.2. Penalty. It shall be unlawful for any person to hunt for, trap, capture, kill or take or cause to be hunted for, trapped, or killed any game animal or birds of any kind whatever, within the limits of said preserve; or to carry or discharge any firearms, or to create any unusual disturbance tending to, or which may frighten or drive away any of the game animals or birds, or to chase the same with dogs or hounds in said preserve; (provided, however, that permits to capture animals or birds for the purpose of propagation, or for scientific purposes, or to destroy

mountain lions, wolves, foxes, coyotes, wildcats, mink or other predatory animals or birds, or for carrying firearms, may be issued by the state game warden upon the payment of such fee, and in accordance with such regulations as may be established for said preserve by the state game and fish commission). Any person violating any of the provisions of this act shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than twenty-five (\$25) dollars, nor more than one hundred (\$100) dollars, or by imprisonment in the county jail for not less than thirty (30) days nor more than six (6) months, or by both such fine and imprisonment.

En. Sec. 2, Ch. 7, L. 1923.

3778.3. Teton-Spring creek bird preserve. For the better protection and propagation of birds, the following described area in Teton county, state of Montana, is hereby set aside and established as a state bird preserve, to be known as the Teton-Spring creek bird preserve.

All of sections two (2), three (3), four (4), nine (9), ten (10), eleven (11), twelve (12), thirteen (13), fourteen (14), and fifteen (15), in township twenty-four (24), north, range five (5) west.

En. Sec. 1, Ch. 33, L. 1923.

3778.4. Penalty—Issuance permits. It shall be unlawful for any person to hunt for, trap, capture, kill, or take or cause to be hunted for, trapped, or killed any birds of any kind whatever, within the limits of said preserve; or to discharge and [any] firearms, or to create any unusual disturbance tending to, or which may frighten or drive away any of the birds, or to chase the same with dogs in said preserve; provided, however, that permits to capture animals or birds for the purpose of propagation, or for scientific purposes, or to destroy mountain lions, wolves, foxes, coyotes, wildcats, mink or other predatory animals or birds, may be issued by the state game warden, upon the payment of such fee, and in accordance with such regulations as may be established for said preserve by the state game and fish commission. Any person violating any of the provisions of this act shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than twenty-five (\$25) dollars, nor more than one hundred (\$100) dollars, or by imprisonment in the county jail for not less than thirty (30) days nor more than six (6) months, or by both such fine and imprisonment.

En. Sec. 2, Ch. 33, L. 1923.

3778.5. Spotted Bear Game Preserve. For the better protection and propagation of game animals and birds, the following described area in Powell and Flathead counties, state of Montana, is hereby set aside and established as a state game preserve, to be known as the Spotted Bear game preserve:

Beginning at the mouth of Cayuse creek where it flows into the South Fork of the Flathead river, in Powell county; running thence up Cayuse creek to the summit of the Continental divide; thence north along the Continental divide to a point opposite Pentagon mountain, in Flathead county; thence down Pentagon creek to its confluence with Spotted Bear

creek; thence down Spotted Bear creek to the South Fork of the Flathead river; thence southerly up the west bank of the South Fork of the Flathead river to the point of beginning.

En. Sec. 1, Ch. 87, L. 1923.

3778.6. Hunting prohibited—Permits when issued. It shall be unlawful for any person to hunt for, trap, capture, kill or take or cause to be hunted for, trapped or killed any game animal or birds of any kind whatever, within the limits of said preserve; or to discharge any firearms, or to create any unusual disturbance tending to, or which may frighten or drive away any of the game animals or birds, or to chase the same with dogs or hounds in said preserve; provided, however, that permits to capture animals or birds for the purpose of propagation, or for scientific purposes, or to destroy mountain lions, wolves, foxes, coyotes, wildcats, mink, or other predatory animals or birds, may be issued by the state game warden, upon the payment of such fee, and in accordance with such regulations as may be established for said preserve by the state game and fish commission. Any person violating any of the provisions of this act shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than twenty-five (\$25) dollars, nor more than one hundred (\$100) dollars, or by imprisonment in the county jail for not less than thirty days nor more than six months, or by both such fine and imprisonment.

En. Sec. 2, Ch. 87, L. 1923.

3778.7. Little St. Joe Game Preserve. For the better protection and propagation of game animals and birds, the following described area in Mineral county, state of Montana, is hereby set aside and established as a state game preserve, to be known as the Little St. Joe game preserve.

Beginning at a point on the west bank of the Missoula river where the divide between Dry creek and Oregon creek intersects said river bank; running thence westerly along said divide to the summit of the Bitter Root range, which is the line between Montana and Idaho; thence northwesterly along the summit of said Bitter Root range to a point where the divide between Little St. Joe creek and Two Mile creek intersects said range; thence northerly along said divide between the Little St. Joe creek and Two Mile creek to a point where said divide intersects the west bank of the St. Regis river; thence down the west bank of the St. Regis river to its confluence with the Missoula river; thence up the south bank of the Missoula river to the point of beginning.

En. Sec. 1, Ch. 91, L. 1923.

3778.8. Hunting prohibited—Permits. It shall be unlawful for any person to hunt for, trap, capture, kill or take or cause to be hunted for, trapped, or killed any game animal or birds of any kind whatever, within the limits of said preserve; or to carry or discharge any firearms, or to create any unusual disturbance tending to, or which may frighten or drive away any of the game animals or birds, or to chase the same with dogs or hounds in said preserve; provided, however, that permits to capture animals or birds for the purpose of propagation, or for scientific purposes,

or to destroy mountain lions, wolves, foxes, coyotes, wildcats, mink or other predatory animals or birds, or for carrying firearms, may be issued by the state game warden, upon the payment of such fee, and in accordance with such regulations as may be established for said preserve by the state game and fish commission. Any person violating any of the provisions of this act shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than twenty-five (\$25) dollars, nor more than one hundred (\$100) dollars, or by imprisonment in the county jail for not less than thirty (30) days nor more than six (6) months, or by both such fine and imprisonment.

En. Sec. 2, Ch. 91, L. 1923.

CHAPTER 257.

REGULATION OF RAILROADS—BOARD OF RAILROAD COMMISSIONERS.

3779. Creation of Commission.

The remedies prescribed by this and following sections for recovery of damages caused by the exaction of discriminatory or unreasonable freight charges, are exclusive, and that therefore a complaint based upon the common-law remedy and drawn in entire disregard of the provisions of the statute did not state a cause of action, the common-law remedies having been superseded by said

chapter. *Doney v. Northern Pacific Ry. Co. et al.*, 60 Mont. 209, 199 Pac. 432.

The act creating the railroad commission was cited as chapter 257, Revised Codes of 1921, in *State v. Johnson*, 75 Mont. 240, 248, 243 Pac. 1073.

For text treatment of this subject see vol. 22 Cal. Jur. 4.

3787. Salary of senior safety appliance inspector. The salary of the senior inspector appointed by, and working under, the board of railroad commissioners of the state of Montana shall be, and the same is hereby fixed at, the sum of two thousand five hundred dollars (\$2,500) per annum, payable monthly.

Amd. Sec. 1, Ch. 90, L. 1927.

3794. Power of board to fix rates, schedules and classifications.

Since the presumption obtains that the railroad commission fixed and established reasonable rates in obedience to this section, and that the rate as established is in accordance with the approved and

published tariff, a complaint which fails to allege that freight charges were not in accordance with such tariff is defective. *Doney v. Northern Pacific Ry. Co. et al.*, 60 Mont. 209, 199 Pac. 432.

3802. Attorney-general as attorney for board.

Cited in *State v. Board of Railroad Commrs.*, 73 Mont. 1, 4, 234 Pac. 834.

3803. Court review of action of board—Pleadings.

Cited in *State v. Board of Railroad Commrs.*, 73 Mont. 1, 5, 234 Pac. 834.

3804. Prohibition against rebates and discrimination.

This and sections 3805, 3808, 3809, 3810 and 3811 were cited as sections 4385, 4386, 4389, 4390, 4391 and 4392, Revised Codes, in *Doney v. Northern Pacific Ry. Co. et al.*, 60 Mont. 209, 229, 230, 234, 199 Pac. 432.

3806. Jurisdiction to enforce orders of board.

Cited in *State v. Board of Railroad Commrs.*, 73 Mont. 1, 4, 234 Pac. 834.

3808. Actions to recover excess charges. Any sum or amount of money paid to any railroad by any person or shipper in excess of the rates, tolls, or charges fixed and established by the board for such service, may be recovered from such railroad by the person or shipper in any action instituted and maintained in the district court of the county in which such payment was made, provided such action shall be brought within three years from the date of such payment. No contract or agreement, written or otherwise, between such person or shipper and the said railroad, shall be admissible in evidence for the purpose of showing a waiver of the right given by this section. No voluntary payment by any person or shipper of any such excess or overcharge to any railroad shall be, or held to be, a waiver on the part of such person or shippers of the right to sue and recover for such excess or overcharge, as provided for in this section. If, upon the trial of such action, it shall satisfactorily appear to the court or jury that such overcharge was wilfully made, the person or shipper bringing the said action shall be awarded damages in treble the amount of such excess or overcharge, together with the costs and expenses of such action, including a reasonable attorney's fee, to be taxed and collected as other costs in the action.

Amd. Sec. 1, Ch. 155, L. 1925.

Under this section an allegation that payment of alleged discriminatory or unreasonable freight charges was made in

the county in which the action is brought is jurisdictional. *Doney v. Northern Pacific Ry. Co. et al.*, 60 Mont. 209, 199 Pac. 432.

3808.1. Limitation of actions. All actions at law by carriers subject to this act for recovery of their charges, or any part thereof, shall be begun within three years from the time the cause of action accrues and not after.

En. Sec. 2, Ch. 155, L. 1925.

3809. Action to determine reasonableness of rates or classification.

Cited in *Chicago etc. Ry. Co. v. Board of Railroad Comms.*, 76 Mont. 305, 312, 247 Pac. 162; *State v. Board of Rail-*

road Comms., 73 Mont. 1, 5, 234 Pac. 834.

3810. Action by shippers.

On application for a writ of certiorari to annul an order of the board of railroad commissioners directing the station facilities at a certain town to be removed to another town, relator had a sufficient remedy under this section by an action in the district court to determine whether the order was just and reasonable, and therefore certiorari did not lie. *State v. Board of Railroad Comms.*, 73 Mont. 1, 234 Pac. 834.

A shipper deeming himself aggrieved by a rate fixed by the railroad commission because unjust, unreasonable or discriminatory, must proceed under this section if he desires to have it declared

so; where no rate has been fixed or the one established is considered excessive, he must apply to the commission for investigation and determination of his contention, under section 3796, before he can maintain an action in the courts; and if his case is predicated upon freight charges made in excess of those fixed and established by the commission, his complaint must so allege and the action must be brought within twelve months from the date of payment, under section 3808. *Doney v. Northern Pacific Ry. Co. et al.*, 60 Mont. 209, 199 Pac. 432.

Cited in *State v. Board of Railroad Comms.*, 73 Mont. 1, 5, 234 Pac. 834.

3812. Recovery of penalties and forfeitures.

Cited in *State v. Board of Railroad Comms.*, 73 Mont. 1, 4, 234 Pac. 834.

3817. Existing rights of action not affected by law.

The provision of this section that the Railroad Commission Act shall not have the effect of releasing or waiving "any right of action . . . by any person for any right, penalty or forfeiture which may have arisen or may hereafter arise under any law of this state," etc., does

not have the effect of saving the common-law remedy for recovery of excess freight rates, but refers to the remedies provided by the act itself. *Doney v. Northern Pacific Ry. Co. et al.*, 60 Mont. 209, 199 Pac. 432.

3827. Rules for equipment of cars, trains and engines.

Sections 3827-3829 were cited in *Chicago etc. Ry. Co. v. Board of Railroad*

Commrs., 76 Mont. 305, 315, 247 Pac. 162.

3833. Power to compel construction of commercial spurs.

This section, authorizing the board of railroad commissioners to order railway corporations to construct commercial or industrial spur-tracks under such rules and regulations as the board may establish, without even in the most general terms prescribing the conditions under

which it could compel obedience to its order and without requiring the giving of notice to the carrier or providing for a hearing, is void. *Chicago etc. Ry. Co. v. Board of Railroad Commrs.*, 76 Mont. 305, 247 Pac. 162.

3842. Railroad commission may order electric signal bells installed.

Sections 3842, 3843 were cited in *Knott v. Pepper*, 74 Mont. 236, 244, 239 Pac. 1037.

Sections 3842-3846 were cited in *Normandin v. Payne*, 65 Mont. 543, 548, 212 Pac. 285.

CHAPTER 257A.**REGULATION OF MOTOR TRANSPORTATION COMPANIES.**

3847.1. Official map of state. The map of the state of Montana issued by the board of railroad commissioners of Montana shall be and the same hereby is designated as the official map of the state of Montana.

En. Sec. 1, Ch. 9, L. 1927.

3847.2. Custody of plates. The engraved stone plate from which the editions of said map are from time to time made, and in which the state of Montana now has an investment of more than eight thousand (\$8,000) dollars shall be and remain in the custody of said board of railroad commissioners, and shall be corrected from edition to edition by said board by the inclusion thereon of all proper current map data in accordance with the basic plan of such map.

En. Sec. 2, Ch. 9, L. 1927.

3847.3. 1927 edition — Distribution — Price. The board of railroad commissioners of the state of Montana shall, during the year 1927, cause to be issued in 1927 an edition of said map, containing all necessary corrections since the 1921 edition, and particularly including new counties, new governmental surveys, new inland towns, new railroad towns, new railroad stations and depots, new postoffices, new rail construction and new historical data to make said 1927 edition a complete, final and useful map when issued. Said board of railroad commissioners shall distribute said maps free of charge to state, county and municipal officers for official use and to the public and high schools of the state. In all

other cases, said board of railroad commissioners shall collect a sum of money not in excess of fifty (50c) cents per map for all other maps distributed on request, and all receipts from such collections shall be deposited weekly with the state treasurer of the state of Montana to the credit of the general fund of said state.

En. Sec. 3, Ch. 9, L. 1927.

CHAPTER 258.

REGULATION OF COMMON CARRIERS OF OIL.

3849. Pipe-lines public utilities—Jurisdiction.

Cited in *State ex rel. Continental S. Co. v. Tullock*, 68 Mont. 268, 277, 217 Pac. 348.

3850. Regulation of construction of pipe-lines—Eminent domain.

Cited in *State ex rel. Continental S. Co. v. Tullock*, 68 Mont. 268, 278, 217 Pac. 348.

3851. Establishment of rates—Hearing—Complaints.

Cited in *State ex rel. Continental S. Co. v. Tullock*, 68 Mont. 268, 277, 217 Pac. 348.

CHAPTER 258A.

REGULATION OF TRANSPORTATION BY MOTOR VEHICLE.

3858.1. Definition of terms. The term "corporation" when used in this act means a corporation, company, association or joint stock company;

(b) The term "person" when used in this act means an individual, firm, or copartnership;

(c) The term "transportation company" when used in this act means every corporation, person, their lessees, trustees, receivers, or trustees appointed by the court whatsoever, owning, controlling, operating, or managing any motor vehicle, motor truck, motor bus, bus trailer, semi-trailer or other trailer in connection therewith, used in the business of transportation of persons or property or as a common carrier for compensation over any public highway in this state between fixed termini, or over regular or irregular routes not operating exclusively within the limits of any incorporated city or town;

(d) The term "public highway" when used in this act means every public street, road, highway or way in this state;

(e) The words "for compensation" shall be construed to mean transportation of any person for hire in any motor vehicle; provided, that the railroad commissioners may exempt from the operation of this act the transportation of freight or passengers by motor vehicle in rural communities when not done on a commercial basis;

(f) The term "motor vehicle" when used in this act shall mean any self-propelled vehicle moving over the highway of this state, excepting road rollers, farm tractors, traction engines, fire-extinguishing engines and police or hospital busses or ambulances; provided that every motor vehicle equipped with more than four wheels shall be declared to be a motor vehicle used in connection with a trailer or sub-trailer.

En. Sec. 1, Ch. 154, L. 1923.

Chapter 154, L. 1923, providing for the regulation of the transportation by motor vehicle of persons and property for compensation over the public highways of the state, does not apply to a single, isolated act of transportation for hire in a rural community, and that therefore such an act of transportation without the operator having first obtained a license from the state railroad commission so to do, does not constitute a public offense. *State v. Flagg*, 75 Mont. 424, 242 Pac. 1023.

Chapter 154, L. 1923, in granting the state railroad commission power to impose reasonable rules and regulations for the conduct of the business of motor vehicle transportation of persons or property for compensation and to determine matters of detail in carrying out the legislative will in enacting the measure, neither violates section 1, article IV of the constitution, prohibiting the exercise of powers reposed in one department of government by either of the other two, nor the fundamental principle of constitutional law which prohibits the legislature from delegating its power to any board or commission. *State v. Johnson*, 75 Mont. 240, 243 Pac. 1073.

While every person has the right to travel upon the public highway and transport his property thereon, use of it for the purpose of carrying on the business of motor vehicle transportation is not a vested right but a mere privilege or license which the legislature may grant or withhold in its discretion, or grant upon such conditions as it sees fit to impose; hence chapter 154, L. 1923, regulating such business, is not open to the constitutional objections that it takes private property for public use without due process of law, or denies to the people the right of enjoying their property. *State v. Johnson*, 75 Mont. 240, 243 Pac. 1073.

Only persons who operate motor vehicles on a commercial basis come within the regulatory provisions of chapter 154, above, and under them persons residing in rural communities occasionally carrying passengers or freight for or without compensation and not as a regular business are exempted; hence the proviso in subdivision (e) of section 1 of the act, that the public service commission "may" exempt persons falling within the latter class is construed to mean "must," depriving the commission of any discretion in the matter. *State v. Johnson*, 75 Mont. 240, 243 Pac. 1073.

The fact that chapter 154 above does not exempt the operator of a commercial motor vehicle carrying the United States mail does not render it invalid as an interference with the functions of the federal government; nor does the fact that ambulances or police busses are

exempt affect its validity. *State v. Johnson*, 75 Mont. 240, 243 Pac. 1073.

The provision of chapter 154 fixing a maximum fee for the license required by it for operating a motor vehicle for hire at \$10 per annum and leaving it to the state railroad commission to fix the amount to be paid by each licensee within that limit, held not a delegation of legislative power. *State v. Johnson*, 75 Mont. 240, 243 Pac. 1073.

In the absence of a showing to the contrary, the license fees required to be paid by chapter 154, L. 1923, and the rules and regulations promulgated by the railroad commission, must be presumed to be reasonable. *State v. Johnson*, 75 Mont. 240, 243 Pac. 1073.

Under the rule that one charged with an offense cannot question the validity of an act as to provisions which do not apply to his case, one accused of operating an automobile, motor vehicle and motor-bus, the proof showing that he operated a motor-bus, could not complain of the insufficiency of the definition of "motor vehicle" as given in this section. The other two designations of the vehicle in the information must be treated as surplusage. *State v. Johnson*, 75 Mont. 240, 243 Pac. 1073.

Where congress has acted in the matter of regulation of interstate commerce, the state cannot interfere, but in the absence of regulation by it as respects such commerce carried on by motor vehicles, the state may, as it has done by this act, in the exercise of its police power prescribe rules and regulations for such traffic, and the state board of railroad commissioners has the power to carry its provisions into effect, provided its acts in that regard are not arbitrary or capricious. *Interstate Transit Co. v. Derr et al.*, 71 Mont. 222, 228 Pac. 624.

A city imposed a license fee of \$25 for the first taxi operated for hire and \$12 for each additional one. Held that in the absence of a showing that the railroad commission had exercised the powers given it by this act, the fee exacted by the city cannot be said to exceed the fee imposed by the state for the same purpose contrary to the provisions of section 5039. *State ex rel. City of Bozeman, v. Police Court*, 69 Mont. 435, 219 Pac. 810.

Under this act cities and towns are authorized to enact ordinances licensing and regulating the motor vehicle business for hire, and therefore the contention that such business is not subject to nor requires police regulation is without merit. *State ex rel. City of Bozeman v. Police Court*, 68 Mont. 435, 219 Pac. 810.

Jurisdiction over carriers transporting by motor trucks or busses, notes, 1 A. L. R. 1460; 9 A. L. R. 1011.

3858.2. Class of transportation subject to act. No corporation or person, as defined in section one of this act, their lessees, trustees, receivers, trustees appointed by the court whatever, shall operate any motor vehicle, motor truck, motor bus, bus trailer, semi-trailer, or other trailer in connection therewith for the transportation of persons or property for compensation of any highway or public highway in this state except in accordance with this act.

En. Sec. 2, Ch. 154, L. 1923.

The word "operate" as employed in this section, in providing that no person shall "operate" a motor vehicle for transportation purposes without a license first obtained, held to mean "conduct as a busi-

ness," in view of other provisions of the act which make such a definition of the word necessary for the purpose of harmonizing the requirements of the act as a whole. *State v. Flagg*, 75 Mont. 424, 242 Pac. 1023.

3858.3. Supervision by railroad commission—Regulation by cities. The railroad commissioners of Montana are hereby authorized to supervise every transportation company as defined in section one of this act and on complaint to inquire into rates, fares, and charges to be charged by such transportation company, and to prescribe in each case so brought before said commission an equitable rate, fare, or charge and to require such transportation companies to provide adequate facilities for the conveyance and transportation and to regulate the service and safety of operation of each such transportation company, to require such transportation company to file annual reports and from time to time to furnish such other data as said commission may require in order to administer this act. Cities and towns may enact and enforce reasonable regulations and regulatory ordinances including the imposing of regulatory licenses not destructive of the general purposes of this act. Nothing in this act shall empower the railroad commissioners of Montana to restrict the operation of such transportation company or companies, as have complied with the provisions of this act, in the use of the public highways.

En. Sec. 3, Ch. 154, L. 1923.

Sections 3858.3 to 3858.11 were cited as sections 3 to 11 of chapter 154, L. 1923,

in *Interstate Transit Co. v. Derr et al.*, 71 Mont. 222, 228 Pac. 624.

3858.4. Certificate of permission—Permits. No transportation company, as defined in section one of this act, shall hereinafter operate any motor vehicle, motor truck, motor trailer, bus trailer, semi-trailer or other trailer in connection therewith for the purpose of transportation of persons or property for compensation on any public highway of this state without first having obtained from the railroad commissioners of Montana a certificate which shall set forth the special terms and conditions under which permission is granted to operate any of the vehicles above mentioned. No permit held or owned or obtained by any transportation company shall be assigned, leased or transferred except upon the authority or authorization of the railroad commissioners of Montana. A permit issued by the railroad commission to operate any motor vehicle or any other vehicle prescribed by this act for compensation over any of the highways of the state of Montana shall not be an exclusive right or license to operate over any route, road, highway or between any fixed terminals, but said commission shall have the power after hearing,

when the applicant requests a certificate to operate in a territory already served by a certificate holder or licensee, under this act, only when the existing auto transportation company or companies serving such territory, route or stage line, does not provide adequate transportation facilities and service to the satisfaction of the commission, and in all other cases with or without hearing, to issue said certificate as prayed for, or for good cause shown to refuse to issue same or to issue it for the partial exercise only of the said privilege sought, and may attach to the exercise of the rights granted by said certificate such terms and conditions as in its judgment the public convenience and necessity may require.

En. Sec. 4, Ch. 154, L. 1923.

3858.5. Revocation of permits. The railroad commission of Montana shall have the power to revoke any permit or license issued under the powers granted by this act, and may revoke any such permit or license when the holder or holders thereof or his or [of] their agents, or representatives shall be guilty of repeated violations of this act or of the motor vehicle laws of the state of Montana, but no action shall be taken without notice, as the railroad commission shall deem sufficient, and upon a hearing thereon.

En. Sec. 5, Ch. 154, L. 1923.

3858.6. Bond required — Conditions. No transportation company shall, subsequent to the taking effect of this act, operate any motor vehicle, motor bus, bus trailer, semi-trailer or other trailer in connection therewith, for the transportation of persons or property for compensation on any public highway in this state without first having filed with the railroad commission of Montana a good and sufficient bond with such surety or sureties and conditions satisfactory to the railroad commission, or a public liability and property damage policy written by a casualty company, satisfactory to the board of railroad commissioners of Montana, in such an amount as the railroad commission may deem necessary to adequately protect the interests of the public, with due regard to the number of persons and amount of property involved, which surety bond or public liability and property damage policy shall be conditioned to insure the transportation company against its legal liability for injury to the public and damage to property thereof resulting from the negligent operation of such motor vehicles.

The foregoing shall not prevent the acceptance of cash or its equivalent in lieu of bonds or insurance policies. Said railroad commissioners shall also require a satisfactory bond in such penal sum and conditioned upon the payment of all fees or charges which may be due the state under any permit for operation and for the faithful carrying out of any permit granted by the railroad commissioners and which it has authority by law to grant, and no transportation company which shall fall within the terms of this act, and has given the bonds herein required shall be required to give any other bond or security by any city or town, or other agency of the state. Personal sureties shall not be accepted by the railroad commission upon any bond provided by this act.

En. Sec. 6, Ch. 154, L. 1923; Amd. Sec. 1, Ch. 103, L. 1925. judicial power in the railroad commission is without merit. State v. Johnson, 75 Mont. 240, 243 Pac. 1073.

3858.6A. Effect partial invalidity act. If any section, subsection, sentence, clause, or phrase of this act is for any reason held unconstitutional, such decision shall not affect the validity of the remaining portions of this act. The legislative assembly declares that it would have passed this act and each section, subsection, sentence, clause, and phrase thereof irrespective of the fact that any one or more section, subsections, sentence, clauses, or phrases be declared unconstitutional.

En. Sec. 2, Ch. 103, L. 1925.

3858.7. Procedure before commission—Appeals. In all matters in which the railroad commission of Montana has the power and authority under the constitution and laws of this state or of this act, application and complaints may be made to the railroad commissioners of Montana, processes issued, hearings held, opinions, orders and decisions made and filed, petitions for rehearing filed and acted upon, and proceedings instituted in the district court of any county in Montana, and appeals taken to the supreme court of Montana, in the manner, under the conditions, and subject to the limitations and with the effect specified in the laws applicable to or regulating the railroad commission of Montana, as such laws may provide.

En. Sec. 7, Ch. 154, L. 1923.

3858.8. License fee—Expenses. The railroad commission of Montana is hereby authorized and empowered in the regulation of the persons and corporations as defined in this act, to require the payment of an annual license fee to be paid by each transportation company doing business within the meaning of this act, in accordance with the number and weight and size of such vehicle or vehicles owned or operated by it, such license fee, not to exceed the sum of ten dollars (\$10) per vehicle, to be imposed for the purpose of defraying the expenses of administration of this act and the regulation of the businesses herein described. Such license fees so imposed and collected shall be by the railroad commission paid into the state treasury of Montana monthly and there shall be placed to the credit of the general fund; and any such payment or payments when so made shall constitute and be considered as and are hereby made, an appropriation of such sums or amounts from the general fund for the purpose of carrying out the provisions of this act. All expenses of whatsoever kind or nature of the railroad commissioners incurred in carrying out the provisions of this act shall be audited by the state auditor and passed by the board of examiners of this state and paid out of the moneys hereby appropriated upon the presentation of the duly verified claims therefor after approval by the railroad commissioners of Montana in the same manner as other claims against the state are audited and paid.

En. Sec. 8, Ch. 154, L. 1923.

In a prosecution of the operator of a commercial motor vehicle for failure to pay the license fee prescribed by this section, the state need not prove that the vehicle in question was not one of

those exempted from the act, since an exception need not be negatived, unless it is a constituent part of the offense. State v. Johnson, 75 Mont. 240, 243 Pac. 1073.

3858.9. Penalties. Every officer, agent or employee of any corporation and every other person who violates or fails to comply with or procures, aids or abets in the violation of any provision of this act, or who fails to obey, observe or comply with any order, decision, rule or regulation, direction, demand, or requirement, or any part or provision thereof of the railroad commission of Montana, or who procures, aids or abets, any corporation or person in its failure to observe or comply with any such order, direction, decision, rules, demand or requirement, or any part or provision thereof, shall be guilty of a misdemeanor and shall be punishable by a fine of not less than fifty dollars (\$50) and not exceeding one thousand dollars (\$1,000) or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment in the discretion of the court.

En. Sec. 9, Ch. 154, L. 1923.

3858.10. Scope of act. Neither this act nor any provisions thereof shall be applied or be construed to apply to commerce with foreign nations or commerce among the several states of this union except in so far as the same may be permitted under the constitution of the United States, treaties made thereunder and the acts of congress.

En. Sec. 10, Ch. 154, L. 1923.

3858.11. Effect partial invalidity act. If any section, subsection, sentence, clause, or phrase of this act is for any reason held unconstitutional, such decision shall not affect the validity of the remaining portions of this act. The legislative assembly declares that it would have passed this act and each section, subsection, sentence, clause, and phrase thereof irrespective of the fact that any one or more section, subsections, sentences, clauses, or phrases be declared unconstitutional.

En. Sec. 11, Ch. 154, L. 1923.

CHAPTER 259.

REGULATION OF NAVIGATION—INSPECTION OF BOATS AND VESSELS BY RAILROAD COMMISSION.

3859. Appointment of inspectors of water craft. That each inspector of boilers, appointed by the industrial accident board under the provisions of section 2712, shall be appointed and designated by the board of railroad commissioners of the state of Montana as ex-officio inspector of steam vessels, other boats propelled by machinery, sailing craft, ferry-boats and barges, other than private pleasure boats, on any of the navigable waters of the state of Montana.

Amd. Sec. 1, Ch. 105, L. 1923.

3875. Compensation of inspectors—Inspection and license fees. Inspectors of boilers shall not be entitled to any additional compensation for services performed by them as inspectors of water craft. The fees for such inspection shall be paid at the time of the inspection. All fees for licenses shall accompany the application for such license, and in case such license is not issued, the fees shall be returned to the applicant.

All fees must be accounted for and paid over to the state treasurer for use of general fund.

Amd. Sec. 1, Ch. 105, L. 1923.

CHAPTER 260.

REGULATION OF PUBLIC UTILITIES—PUBLIC SERVICE COMMISSION.

3879. Creation of public service commission.

The act creating the public service commission confers upon the commission the power, within the lawful exercise of its authority, to change the rates, tolls and charges in public utility contracts, even though they existed prior to the passage of the act. *City of Billings v. Public Service Com.*, 67 Mont. 29, 30, 214 Pac. 608.

The public service commission has jurisdiction to relieve a street railway company of its contract obligation to operate its line during the period covered by its franchise, on the ground that its operation entailed a loss, but, until the

state has acted, the obligation to run is a continuing one and must be discharged. *City of Helena v. Helena Light & Ry. Co.*, 63 Mont. 108, 207 Pac. 337.

An irrigation company organized for the purpose of supplying water for the irrigation of agricultural lands is not a "public utility" within the meaning of sections 3879-3913 and is therefore not subject to supervision and regulation by the public service commission. (Mr. Chief Justice Brantly and Mr. Justice Galen dissenting.) *State ex rel. Thatcher v. Boyle et al.*, 62 Mont. 97, 204 Pac. 378.

3880. Railroad commissioners ex-officio commission.

This and the following section were cited as sections 2 and 3, chapter 52, L. 1913, in *State v. Boyle et al.*, 62 Mont. 97, 102, 204 Pac. 378.

3887. Right to examine books, records, etc.

Cited as section 7, chapter 52, L. 1913, in *State v. Boyle et al.*, 62 Mont. 97, 106, 204 Pac. 378.

3888. Failure to make reports or permit examinations.

Cited in *City of Billings v. Public Service Com.*, 67 Mont. 29, 37, 214 Pac. 608.

3891. Schedules of rates, tolls and charges.

Cited in *City of Billings v. Public Service Com.*, 67 Mont. 29, 36, 214 Pac. 608.

3892. Greater or less charges than those prescribed—Rebates and privileges.

The last sentence in this section creating the public service commission: "This, however, does not have the effect of suspending, rescinding, invalidating or in any way affecting existing contracts," refers to the preceding sentence and not to the entire act, and means that, until changed by the commission, the rates, toll and charges were to remain as fixed in existing contracts, even though such

contracts granted rebates, concessions and special privileges, and that pending change by the commission the public utility was protected from prosecution; overruling the decision in *Helena L. & Ry. Co. v. Northern Pac. Ry. Co.*, 57 Mont. 93, in so far as it conflicts with the above holding. *City of Billings v. Public Service Com.*, 67 Mont. 29, 30, 214 Pac. 608.

3905. Enforcement of rates or charges.

Rates fixed by the public service commission for a public utility furnishing hot-water heat in a city are *prima facie* lawful, can be attacked in court on the sole ground that they are unlawful or unreasonable, and must be deemed reasonable and just until final determination by the courts, the burden of proof resting upon the party attacking the order of

the commission. *Billings Utility Co. v. Public Service Com. of Montana et al.*, 62 Mont. 21, 203 Pac. 366.

This and the following section were cited as sections 25, 26, chapter 52, L. 1913, in *Billings Utility Co. v. Public Service Com.*, 62 Mont. 21, 32, 203 Pac. 366.

CHAPTER 260A.

REGULATION AND LICENSING OF GASOLINE MANUFACTURERS AND DEALERS.

3913.1. Gasoline manufacturers and dealers' license — Application.

All persons, firms, copartnerships, corporations, trusts or agencies engaged, directly or indirectly, in the business of selling or offering or advertising for sale or in the business of refining or manufacturing or keeping for sale within the state of Montana any gasoline, kerosene, distillate, road oil, fuel oil, or any oil or gas or oil and gas product, lubricating oil and greases, for use in motor vehicles or in internal combustion engines, shall make application to the public service commission of Montana, upon such blank forms as may be provided by said commission for the right to do business in the state of Montana and the making of such application shall be a condition precedent to the right of any such person, firm, copartnership, corporation, trust or agency to transact any such business within the state of Montana and upon the making and filing of such application and the payment of the proper fee, a license shall issue to the applicant.

Such persons, firms, copartnerships, corporations, trusts or agencies are hereinafter, for brevity, designated dealers, and the term "dealers" whenever used herein, shall include all persons, firms, copartnerships, corporations, trusts or agencies described in this section.

En. Sec. 1, Ch. 109, L. 1927.

3913.2. License fee. Each dealer shall pay a license fee of one dollar for each separate place of business where such dealer transacts business, and one dollar additional for each gasoline pump or vending machine in excess of one used at such place of business. All licenses shall be annual and expire December thirty-first. Each refinery doing business in the state of Montana shall pay an annual license fee of one dollar.

En. Sec. 2, Ch. 109, L. 1927.

3913.3. Gasoline inspection fund. All fees and receipts taken and received by said commission in the administration of this act shall be transmitted and credited to the state gasoline inspection fund, hereby created, and the state treasurer of the state of Montana shall have the custody of said fund and keep the same separate from any other funds under his control; and all of the expenses incurred in the administration of this act, or in enforcing the terms hereof shall be paid out of said fund in the same manner as other claims against the state of Montana.

En. Sec. 3, Ch. 109, L. 1927.

3913.4. Public service commission to enforce act. The public service commission of Montana is hereby required to secure the proper enforcement of this act, to procure for inspection and test and cause to be inspected and tested suitable samples of the commodities enumerated herein, to make all necessary rules and regulations not inconsistent with the terms of this act for the procuring and transmission of said samples and for reporting the results of analyses; to inform the county attorney of the proper county of all cases of violations of this law and to require

said county attorney to assist in investigations under the provisions hereof and to ascertain the facts with respect thereto.

En. Sec. 4, Ch. 109, L. 1927.

3913.5. Names and grades to be indicated. All of the commodities enumerated herein must be sold under and through names and grades respectively, and such names and grades must be impressed indelibly, painted or stamped, or otherwise plainly marked upon the barrel, can, carboy, vessel or other container in which the same are stored, sold, offered or exposed for sale or shipped, respectively, or upon a label conspicuously and securely fastened thereto, giving the true name and grade and content of the product and the name and address of the manufacturer or dealer who sells the same.

It shall be unlawful, in violation of this act to sell or offer or expose for sale any commodities unless the same are properly marked as herein provided and unless the said commodities shall, in all respects, meet the tests and standards herein prescribed. It shall be the duty of every wholesaler of gasoline to furnish with each delivery of gasoline to a retailer, a statement that the said gasoline conforms with the standards by this act prescribed.

En. Sec. 5, Ch. 109, L. 1927.

3913.6. Gasoline standards. The standards of quality and strength for gasoline kept for sale or offered for sale within the state of Montana, shall at all times be identical with the then current specifications of gasoline known as United States government motor gasoline as promulgated by the bureau of mines of the department of the interior of the United States, or by other competent federal authority.

En. Sec. 6, Ch. 109, L. 1927.

3913.7. Kerosene standards. The standards of quality, purity, and strength for all kerosene kept, offered or exposed for sale within the state of Montana shall be as follows: The flash-point of all kerosene shall not be less than one hundred ten degrees Fahrenheit, measured in the Tagliabue open cup, and said kerosene shall contain no water or other foreign matter.

En. Sec. 7, Ch. 109, L. 1927.

3913.8. Public service commission to prescribe tests. The public service commission is hereby empowered to make and cause to be made, such inspections as may be necessary to secure compliance with this act and the safe handling and use of the commodities enumerated herein.

Specifically, such tests shall cover and be applicable to:

(a) Any of the enumerated commodities manufactured or refined in this state and distributed to dealers in this state;

(b) Any of the enumerated commodities shipped into this state from points outside thereof and resold or distributed to dealers for resale or distribution in this state;

(c) Any of the enumerated commodities exposed or offered for sale in this state.

Any gasoline, petroleum or distillate shipped into this state for the use by shipper or consignee in any place where the same is or may be dangerous to human life or public safety shall be subject to test and inspection by the public service commission as in this act provided.

En. Sec. 8, Ch. 109, L. 1927.

3913.9. State chemist to make tests. The head or chairman of the department of chemistry of the State College of Agriculture and Mechanic Arts of the state of Montana is hereby designated as state chemist, and is authorized, and it shall be his duty, to make all analyses and tests of articles inspected under the terms of this act, and to employ in such analyses and tests the standard methods of analysis. The state chemist shall receive no compensation for his services, nor shall he charge any fee for testing or analyzing any samples required to be analyzed by him under the terms of this act; provided, however, that neither the state chemist nor the department of chemistry of the State College of Agriculture and Mechanic Arts shall be required to receive for analysis any unofficial samples submitted by any agency other than the public service commission of Montana.

En. Sec. 9, Ch. 109, L. 1927.

3913.10. Assistants may make analyses. All analyses herein directed to be made by the state chemist may, in the discretion of such state chemist, be made by any competent assistant acting under his supervision; provided, however, that such assistant shall be appointed under the rules and regulations of the state board of education.

En. Sec. 10, Ch. 109, L. 1927.

3913.11. State chemist to give evidence. It shall be the duty of the state chemist or his assistants to attend and give evidence in all prosecutions instituted for the enforcement of this act, and such chemist or assistant shall receive the same fees and mileage for attendance in such cases as are prescribed by the laws of the state of Montana to be paid to witnesses in courts of record.

En. Sec. 11, Ch. 109, L. 1927.

3913.12. Dealers to post notices. All dealers shall post in at least two conspicuous public places in each and every plant, filling station or distribution agency operated by and through them, a notice to the public, on forms to be prescribed by the public service commission, advising the public in plain terms of the grade and character of commodities offered for sale or sold therein. If such dealers are engaged in selling more than one grade, quality or character of commodity under the description "high test" or "winter gasoline" or "high power gasoline" or "more mileage gasoline," or under any term indicating that the commodity has been specially treated to produce special results and secure particular effects, said notice shall plainly state the difference in the character, grade or quality of the commodity.

It is hereby made the duty of every dealer subject to the provisions of this act, to submit to the public service commission for transmission by said commission to the state chemist for analysis and report, such

quantity of the commodity to be tested as the commission shall require, accompanied by such data with respect thereto as the commission may prescribe and upon the completion of each test required to be made, the state chemist shall certify to the public service commission of Montana, on forms which said chemist and said commission shall prescribe, report of the analysis made by said state chemist, together with any remarks respecting the commodity analyzed.

En. Sec. 12, Ch. 109, L. 1927.

3913.13. Engine distillate excepted. Nothing in this act contained shall prevent the manufacture or sale of engine distillates, power distillates, or kerosene distillates of a lower specific gravity on the Beaume scale than gasoline, and which do not conform to the standards of quality, purity, and strength prescribed by this act; provided, however, that the package or other container in or from which the same are sold, or offered for sale, shall be plainly labeled in a conspicuous manner easily visible to the purchaser in such a manner as to indicate the name and character thereof; and the packages, containers and dispensors thereof shall be plainly marked in the manner prescribed by the public service commission.

En. Sec. 13, Ch. 109, L. 1927.

3913.14. Registration of trade name. Any dealer within the provisions of this act or any other seller or distributor of the commodities named herein, selling or offering for sale under any trade name, designation or description any of the commodities named herein may make application to the public service commission of Montana for registration of said trade name, designation, description or device, and if the same shall, in the judgment of the commission be a fair name, and not confusing to users and buyers of commodities named herein, and if the same shall not conflict with any previously registered name, said commission shall register such name and the same shall be the exclusive property of the dealer so registering the same, and any infringement thereof in public advertisement or competitive salesmanship shall constitute cause for revocation of the license of the infringer after due hearing as in this act provided.

En. Sec. 14, Ch. 109, L. 1927.

3913.15. Revocation of license for misrepresentation. It shall be unlawful for any dealer under this act to misrepresent the quality, essential characteristics or brand of any of the enumerated commodities sold by him or to substitute without the knowledge and consent of the purchaser a different quality or brand of commodity than that ordered by such purchaser, and a violation of these requirements shall constitute cause for revocation of license.

En. Sec. 15, Ch. 109, L. 1927.

3913.16. Definition of misbranding. For the purpose of this act, the term "misbranded" shall be construed as follows: All articles, the package or labels of which shall bear any statement, design, or device

regarding the same, or regarding ingredients or substances therein, or regarding the properties of such articles, which are false or misleading in any particular whatsoever, shall be deemed misbranded.

En. Sec. 16, Ch. 109, L. 1927.

3913.17. Sampling and employment of inspectors. For the purpose of obtaining information regarding suspected violation of this act, said public service commission or any member thereof, or duly authorized representative shall have access to all places where the commodities enumerated herein are sold, offered for sale or kept for sale, manufactured, transported, or stored, and may take samples therefrom for analyses tendering payment therefor.

Any user or customer shall have the right, upon tendering payment therefor to receive from any dealer, a sample of any commodity sold for purpose of having analysis and test thereof made by the state chemist through the public service commission.

Any member of said commission, or any duly authorized representative thereof shall have the right to inspect any of the commodities enumerated herein, whether the same originate at points without the state or otherwise and whether the same are in transport or at rest in places where they are dangerous to human life or public safety.

Any person obstructing any entry or inspection authorized by this section, or failing upon request to assist therein shall be guilty of a misdemeanor and shall be punished therefor in accordance with law. The public service commission shall employ from time to time such inspectors as said commission shall deem necessary to carry out the provisions of this act, and said commission shall fix the compensation of such inspectors. The inspectors herein provided for shall be paid from the "gasoline inspection fund" provided for in this act and all expenses of carrying out the provisions of this act shall be paid from said fund.

En. Sec. 17, Ch. 109, L. 1927.

3913.18. Inspection of measuring devices. The commission shall have power to inspect and classify all meters and measuring, gauging or testing devices and apparatus used in connection with the wholesale or retail distribution of the products enumerated herein, and may prescribe suitable standards of accuracy for such meters and measuring devices, conformable to the standards fixed by the United States bureau of standards for such devices.

En. Sec. 18, Ch. 109, L. 1927.

3913.19. Cancellation of license—Hearing. If the commission shall find that any dealer operating under this act has violated any of the provisions hereof, or of any lawful order or decision of the commission, promulgated pursuant to the provisions of this act, the commission shall, after due hearing thereon, noticed for not less than ten days, revoke, cancel, or suspend any license that it has theretofore granted; and such revocation, cancellation or suspension, may be conditioned on such terms as to the commission may seem just and proper.

En. Sec. 19, Ch. 109, L. 1927.

3913.20. Penalty. If any person, firm, copartnership or corporation coming within the provisions of this act shall violate any of the provisions of this act or shall do any act herein prohibited, or shall fail or refuse to perform any duty enjoined upon it, for every such violation, failure or refusal such person, firm, copartnership or corporation shall, in addition to the forfeiture of license as hereinbefore provided, be for the first offense punished by a fine of not less than ten dollars (\$10) and not to exceed one thousand dollars (\$1,000), and shall be punished for any subsequent offense by a fine of not less than fifty dollars (\$50) nor more than five thousand dollars (\$5,000), or by imprisonment in the county jail for a term not exceeding one year, or by both such fine and imprisonment.

En. Sec. 20, Ch. 109, L. 1927.

3913.21. Appropriation. That the sum of seventy-five hundred dollars or so much thereof as may be necessary be and the same is hereby appropriated out of any moneys in the automobile license fees not otherwise appropriated for the purpose of carrying out the provision of this act. Said moneys to be credited by the state treasurer of the state of Montana to the state gasoline inspection fund herein above created.

En. Sec. 21, Ch. 109, L. 1927.

3913.22. Effect partial invalidity act. If any section, clause, sentence or provision in this act shall be declared unconstitutional such decision shall not invalidate other portions not involved in such decision.

En. Sec. 22, Ch. 109, L. 1927.

CHAPTER 262.

REGULATION OF IRRIGATION AND OF WATER RIGHTS—MONTANA IRRIGATION COMMISSION.

3947. Creation of commission.

This and the following sections of this act were cited as chapter 13, L. Extra. Sess. 1919, in State v. Boyle et al., 62 Mont. 97, 104, 204 Pac. 378.

CHAPTER 263.

ORGANIZATION AND CONTROL OF IRRIGATION DISTRICTS BY PUBLIC SERVICE COMMISSION.

3956. Procedure for organizing irrigation district—Petition—Map—Bond—Examination and report. For the purpose of establishing and organizing an irrigation district hereunder, a petition in duplicate, signed by sixty per centum of the number of the holders of title, or evidences of title to lands susceptible of irrigation from the same general source, and by the same general system of works, such holders of title or evidence of title also representing sixty per centum in acreage of said lands shall be filed with the clerk of the district court of the county in which the lands of the proposed district, or the greater portion thereof, are situate, accompanied by written instructions that one of the copies of the petition shall be forwarded to the secretary of the public service commission of Montana; provided, that if there are three or more counties embraced

in the proposed district, and no one county embraces fifty per cent (50%) or more of said lands, then and in that event shall be filed in the county which embraces a greater portion of said lands than any one of the other counties embraced in said proposed district; provided, however, that when any of such land sought to be included in such irrigation district is covered by mortgages or other lien, then the owner or owners of such land shall first procure the written consent of the holder of such mortgage or other lien before proposing the establishment and organization of such irrigation district. The county assessment-roll or rolls of the year last preceding, or the roll or rolls which have been last equalized at the time of the filing of the petition, or the certificate of the county clerk and recorder or the certificate of the register of the state land office shall be sufficient evidence of title for the purpose of this act. Such petition shall set forth: (1) The name suggested for the proposed district; (2) A general description of the lands to be included in the proposed district; (3) The names of the holders of title or evidence to the lands in the proposed district ascertained in the manner hereinbefore mentioned; and if any holder is a nonresident of the county or counties in which the proposed district lies, the postoffice address of such nonresident owner, if known; (4) Generally the source from which the land in the proposed district is to be irrigated, the character of the works, water rights, canals, and other property proposed to be acquired or constructed for irrigation purposes in the proposed district; (5) A statement that signers will pay any and all expenses incurred and any tax or taxes that may be levied against their lands for the purpose of paying the expense of organizing or attempting to organize the proposed district, retiring any bonds that may be issued and the interest thereon; (6) A prayer that the lands embraced within the proposed district be organized as an irrigation district according to the provisions of this act.

The petition shall be accompanied with (1) a map or plat of the proposed district, and (2) a good and sufficient bond or undertaking to be approved by the district court or judge thereof of the county in which the petition is filed, equal in amount to the probable cost of organizing such district, to be filed under the provisions of this act, to pay all costs in and about the proceeding preliminary to the organization of the district in the event that said organization shall not be effected.

Mere error or omission in the description of any land or in the names of any of the holders of title or evidence of title to lands, shall not operate to render invalid any proceedings hereunder or to deprive either the district court or the commission of jurisdiction in the subject matter; provided, such misdescribed lands or misnamed persons shall not be included in said district.

It shall be the duty of the clerk of the district court in which such petition is filed to forward one copy of the petition, properly certified by him, to the secretary of the public service commission, who shall refer the same to its chief engineer, who shall advise the commission of the estimated amount of his expenses in making preliminary examination of the lands to be included in the proposed district and the source from which the lands are to be irrigated. The secretary of the commission shall thereupon advise the party or parties filing the petition for the proposed irrigation district, of the amount of the preliminary expenses

of the engineer, which amount shall forthwith be paid to the secretary of the commission and by him turned over to the state treasurer to be credited to the Montana irrigation fund, hereby created.

Upon payment of such amount to the secretary of the commission, the engineer shall make a preliminary examination of the lands to be included in the proposed irrigation district, and the source from which the lands are to be irrigated, and shall make a report to the commission as to the feasibility and advisability of the creation of such proposed district. The expenses of the engineer (not including his salary, but including the salaries of the necessary assistants) shall be paid out of the funds so deposited with the secretary of the commission and any surplus over and above said expenses shall be returned to the petitioners by a warrant drawn on the Montana irrigation fund. Upon the report of the engineer being filed with the commission, showing an estimate of the amount of water available for irrigating the lands to be served thereby, the number of acres that can be irrigated by such water and the approximate cost per acre and annual maintenance cost, the commission shall thereupon make a recommendation as to whether or not the estimated cost of the construction or acquisition of the irrigation works will be disproportionate to the benefits to be derived therefrom.

The commission is authorized to call upon and it is hereby made the duty of the state engineer to make an investigation and report to said commission, within not more than one hundred twenty (120) days after demand therefor, as to the available water supply and the right of the district to use the water as proposed, said report, or true copy thereof, to be included in and made a part of the said preliminary report of the commission.

The secretary of the commission shall therefor transmit to the clerk of the district court in which the original petition was filed, a certified copy of such estimate and recommendations, under the seal of the commission. The district court shall examine and consider the estimate and recommendation of the commission before establishing any irrigation district, such estimate and recommendation being hereby made competent and relevant testimony. The petitioners shall have the right to subpoena and cross-examine any members of the commission or its engineers at the initial and all subsequent hearings pertaining to the district; provided, however, that the provisions of this act shall not apply to any irrigation district organized for the purpose of co-operating with the reclamation service of the United States government.

Amd. Sec. 1, Ch. 147, L. 1923; Amd. Sec. 1, Ch. 135, L. 1925.

For text treatment of this subject see vol. 26 Cal. Jur. 346.

Cited in *In re East Bench Irr. Dist.*, 70 Mont. 186, 189, 224 Pac. 859.

3958. Hearing of petition — Adjournment — Amendment — Order of Court.

Where a petition for the creation of an irrigation district is regular and the statutory notice has been given, the court acquires jurisdiction of both the subject matter of the petition and of all

persons named therein as owners of land in the proposed district. *In re East Bench Irr. Dist.*, 70 Mont. 186, 224 Pac. 859.

3960. Meeting of directors—Election secretary—Office. The directors shall meet within ten days after their appointment by the court, and shall organize as a board by the election of one of their number as president, to serve at the pleasure of the board; they shall also elect a secretary (who may or may not be a director). The compensation of the secretary and all other employees authorized under this act shall be fixed by the board.

The board shall also at this meeting designate the place where the office of the board shall be established and maintained and its records kept, which place shall be in the county containing the major portion of the lands of the district; and such place shall not be changed except by resolution of the board, of which notice shall be given by at least one publication in some newspaper published, or of general circulation, in the county wherein the office of the district is located, and by posting in at least three public places in each division.

Amd. Sec. 2, Ch. 147, L. 1923.

3964. Powers of board of directors.

In allowing or disallowing a claim against an irrigation district, the board of directors does not act in a judicial or quasi-judicial capacity, and upon dis-

allowance of a claim, the claimant's only remedy lies in the ordinary judicial proceeding. *State ex rel. Haley v. Dilworth*, 76 Mont. 218, 246 Pac. 167.

3965. Plan of reclamation—Final report of commission. It shall be the duty of the commission to assist and co-operate with the board of directors in the proceedings for the confirmation of any bond issue. Upon receipt of the copy of the district engineer's report, plans, estimates and maps, the commission shall thereupon cause to be made by its own engineers such additional surveys and field investigations as may be necessary and approve or disapprove of all or any portion of such proposed plans, estimates and specifications, and shall have the authority to order such changes or alterations in such plans, estimates and specifications as may in its judgment be necessary; when the plans are complete to the satisfaction of the commission and are formally adopted, they shall thereafter be known as "the plan of reclamation" a copy so certified shall be forwarded to the secretary of the board of directors and no change of major importance shall thereafter be made without an express order from the commission in each case. The commission shall submit a final report in writing upon such matters as it may deem essential and particularly upon the following points:

(a) The sufficiency of the water supply available for the project and the right of the district to so much of the water as may be needed.

(b) The nature of the soil as to its fertility and susceptibility to irrigation, the probable amount of water needed for its irrigation and the probable need of drainage.

(c) The feasibility of the proposed irrigation or storage system and of the specific project for which the bonds under consideration are desired or have been used, whether such system and project be constructed, projected or partially completed.

(d) The reasonable market value of the water, water rights, canals, reservoirs, reservoir sites or other irrigation works owned by such dis-

trict or to be acquired or constructed by it with the proceeds of such bonds.

(e) The reasonable market value of the land included within the boundaries of the district, both before and after the proposed irrigation plans have been completed.

(f) A discussion of the crops and value thereof as related to the estimated annual assessments for all purposes that may be levied against the district.

(g) Its conclusions, findings, and recommendations as to the entire feasibility of the district and a result of all investigations and advisability of carrying out the plans as adopted.

The commission is authorized to call upon and it is hereby made the duty of the state engineer to make an investigation and report as to the available water supply and the right of the district to use the water as proposed, said report, or true copy thereof to be included in the final report of the commission as outlined in paragraph (a) above, and to be furnished by the state engineer not later than sixty (60) days after demand therefor.

The final report of the commission shall be filed with the clerk of the district court in which the petition was originally filed, and one copy shall be sent to the secretary of the district board. Such report from the public service commission shall be signed by the chairman and the secretary of the commission and have affixed thereto the seal of the commission, and shall be considered by the district court as competent and relevant testimony in subsequent hearings upon the confirmation of bonds proceedings. The order of confirmation shall not be made unless such report is favorable and shall have been filed with the clerk and considered by the court.

Amd. Sec. 3, Ch. 147, L. 1923.

3968. Bonds—Form and terms—Legal investments. The bonds shall be numbered consecutively, commencing with number one and following in numerical order and may be either serial or straight maturity in nature. They shall be negotiable in form and payable in gold coin of the United States of the present standard weight and fineness, or in its equivalent; provided, however, that bonds shall be issued so as to include a sum sufficient to pay the first three years' interest to accrue on said bonds.

Serial bonds may mature annually in such amounts that the total annual payments for principal plus interest shall be approximately equal; provided that the maturity dates shall spread over a term of not less than ten (10) nor more than thirty (30) years, and that the earliest maturity shall be not less than five (5) years and the latest maturity not more than forty (40) years from the date of issue.

Straight maturity bonds shall mature in forty (40) years or less as the board of directors may determine.

The bonds shall bear interest at the rate of not to exceed six per centum (6%) per annum, payable semi-annually on the first days of January and July of each year, and the principal and interest shall be payable at the office of the county treasurer of the county in which the office of the district board is located. Said bonds shall be each of

the denomination of not less than one hundred dollars nor more than one thousand dollars, shall be signed by the president and secretary of the board of directors of the district, and the seal of the district shall be affixed thereto. The interest to become due on each bond shall be evidenced by interest coupons attached to such bond, which interest coupons shall bear the engraved facsimile signatures of the president and secretary of the board of directors of the district. Said bonds shall be registered in the office of the treasurer of the county in which the office of the board of directors of the district is situated, and in the office of the public service commission of Montana, in books kept in their respective offices for that purpose, and therein must be stated the number, date, amount of bond, time and place of payment, rate of interest, number of coupons attached and any other description proper for future identification of each bond, and such commission shall indorse on each such bond a certificate substantially in the following form:

The public service commission of Montana hereby certifies that the within bond No. of the Irrigation District, issue (first date) is in accordance with an act of the legislature of Montana, approved (insert date) a legal investment for trust funds, the funds of insurance companies, banks, both commercial and savings trust companies, bonding companies, permanent school funds of the state of Montana, and any funds which may be legally invested in county, municipal or school district bonds, and it may be deposited as security for the faithful performance of any contract or act whenever the bonds of any county, city or school district may be so deposited, it being entitled to such privilege by virtue of an examination of said district by the public service commission of Montana in pursuance of said act. The within bond may also be used as security for the deposit of public money in the banks of said state.

PUBLIC SERVICE COMMISSION OF MONTANA.

.....,
Chairman.
Attest: Official.
(Seal),
Secretary.

All bonds certified in accordance with the terms of this act shall be legal investments for all trust funds, and the funds of all insurance companies, banks, both commercial and savings, trust companies in the state of Montana, state permanent common school funds and other permanent state education, charitable and penal institution funds of the state of Montana; and whenever any money or funds may, by any law now or hereafter enacted, be invested in bonds of cities, counties, school districts or municipalities in the state of Montana, such money or funds may be invested in said bonds of irrigation districts organized under, or subject to the provisions of this act, and whenever bonds of cities, counties, school districts or municipalities may, by any law or hereafter enacted, be used as security for the performance of any act, said bonds

of irrigation districts under the limitations of this act provided may be so used.

Amd. Sec. 4, Ch. 147, L. 1923.

3969. Delivery of bonds to contractor in lieu of sale—Sale of bonds.

The board may, with the consent and approval of the commission, elect not to sell such bonds but to deliver the same to the person, persons or corporation contracting to construct the works in payment, thereof, and the board may provide in the contract therefor that the bonds shall be delivered to such contractor as the work progresses, or upon the completion thereof, provided, however, that no bonds shall be delivered to such contractor in excess of the amount of work actually done at the time of delivery, nor shall the total amount issued and delivered to such contractor be in excess of the amount due such contractor upon the completion of his contract, and no bonds shall be delivered or received in payment at less than face value unless approved by the public service commission, providing none of such bonds shall be disposed of for less than ninety per cent of their face value.

If the board elects to sell the bonds which have been authorized by the confirmation order of the court, the board may sell the same from time to time, and in such quantities as may be necessary and most advantageous, and it shall be the duty of the commission to assist in the sale of the bonds of the district, by advertising in newspapers or periodicals or in any other manner they see fit. Before making any sale the board shall, at a meeting, by resolution, declare its intention to sell a specified amount of bonds and the day and hour and place of such sale, and shall cause such resolution to be entered on the minutes and one copy to be forwarded to the secretary of the commission, and notice of sale to be given by publication thereof once a week for at least two successive weeks in two newspapers published in the state, one of which shall be a newspaper published in the county in which the office of the board of directors is situated, if there be a newspaper published in said county, and in any other newspaper or periodical at their discretion; the notice shall state that sealed proposals will be received by the board at their office for the purchase of the bonds until the day and hour named in the resolution.

At the time appointed, and in the presence of a member or representative of the public service commission, who shall participate therein in any advisory capacity, the board shall open the proposals and either accept the most favorable bid received from responsible parties, or may reject any and all bids. After offering said bonds for sale, as above provided, if no satisfactory bid is received, the board may use said bonds for any purpose for which the proceeds from the sale of bonds may be used, either by way of sale, exchange or otherwise, at public or private sale, with or without advertisement or public notice, but such board shall in no event sell or dispose of any of said bonds for less than face value without the approval of the commission, providing none of such bonds shall be disposed of for less than ninety per cent of their face value, and provided further, that the board may, by resolution duly entered on its records cancel any bonds which may have been voted or issued which have not been sold, disposed of, or deposited as security for

funds advanced or to be advanced and against which the state, United States, or any other person, firm or corporation shall have no claim to or equity in, and after the cancellation of said bonds the same shall not be sold or otherwise disposed of and shall be invalid and of no effect.

Nothing herein contained shall be construed to prohibit the board of directors from advertising for the sale of bonds, and at the same time for the delivery or exchange of bonds, in the alternative, to the end that proposals for purchase of the bonds or exchange of bonds for construction work, otherwise, may be received and passed upon at one and the same time, if the board so elects.

Amd. Sec. 5, Ch. 147, L. 1923.

3970. Payment of bonds—Liability of property—Lien. Said bonds and the interest thereon due or to become due to the United States under any contract between the district and the United States, and all bonds and obligations for the payment of money authorized and incurred under this act, shall constitute a general obligation of the district and shall be paid by the revenue derived from the annual assessments upon the land in the district, and all the lands in the district shall be and remain liable to be assessed for such payments as herein provided, subject to the provisions of this act.

In addition to the provisions for the payment of said bonds and interest by taxation and other provisions of this act, all the property of the district, including irrigation and other works, shall be liable for the indebtedness of the district, and the holder or holders of the bonds of the district, may in case of default in the payment of interest or principal on the bonds, upon the order of the court, take possession of the irrigation and other works of the district and operate the same until the amount in default shall have been fully paid.

All bonds issued hereunder shall be a prior lien upon all the lands originally or at any time included in the district for the irrigation and benefit of which said irrigation district was organized and said bonds issued, except as to such lands as may at any time have been included in such district on account of the exchange or substitution of water under the provisions of this act, if any there be; and all such lands shall be subject to a special tax or assessment for the payment of principal and interest of such bonds; and said special tax or assessment shall constitute a first and prior lien on the lands against which levied to the same extent and with like force and effect as taxes levied for state and county purposes.

The bonds issued under the provisions of this act, rights of way, ditches, flumes, pipe lines, dams, water rights, reservoirs, and other property of like character, belonging to any irrigation district, shall not be taxed for state, county or municipal purposes.

Amd. Sec. 6, Ch. 147, L. 1923.

3973. Sinking fund and tax levy. Where straight maturity bonds are issued, it shall be the duty of the board of directors of the district to create and maintain a sinking fund sufficient to pay and discharge said bonds at maturity. If said bonds shall be issued for twenty years or less, there shall be annually levied for such sinking fund a special

tax or assessment as aforesaid, sufficient to produce a net amount represented by the quotient found by dividing the aggregate amount of the principal of the bonds by the number of years the bonds have to run; but if said bonds are issued for more than twenty years, then it shall not be necessary to levy a special tax or assessment for sinking fund until the twentieth year prior to the maturity of the bonds, at which time and each year thereafter there shall be levied and collected a special tax or assessment sufficient to produce a net sum equal to one-twentieth part of the aggregate amount of the principal of the bonds.

The board shall have power and authority, with the approval of the commission, to direct the investment of funds in any bond sinking fund in interest bearing securities, whenever in their judgment the same may be to the best interests of the district. But all such securities shall be such as will be paid and converted into cash in time to meet the principal on the bonds payable from such sinking fund promptly at their maturity.

Amd. Sec. 7, Ch. 147, L. 1923.

3974. Determination annual administrative expenses—Levy and collection of tax. The board of directors shall on or before the second Monday in July of each year, determine the total amounts of money necessary to be raised by said district for the ensuing year, for any and all purposes whatsoever in carrying out the provisions of this act, including interest on and principal of the bonded or other indebtedness of the district, maintenance and repairs, and may increase said amounts by not to exceed fifteen per cent, for the purpose of taking care of any delinquencies or contingencies.

The board of directors shall levy against each forty acre tract or fraction thereof, as designated by the United States public surveys, that portion of the said amounts so to be raised which the irrigable area of each tract bears to the total area of all the irrigable lands of the district, said irrigable area to be determined by a careful topographic survey and map of all lands in the district, or by the best available information before the completion of such survey and map. Should it be found that a substantial error has been made in the determination of any assessment, proper adjustment may be made at the next annual assessment by increasing or decreasing the amount any land owner shall pay.

Provided, however, that no assessment for interest and principal of bonded or other indebtedness shall be made or levied against any lands which may have been included within the district on account of the exchange or substitution of water under the provisions of this act but all such lands shall be assessed for all administrative, maintenance and operating purposes, including the payment of interest upon warrants issued therefor, the same as other lands in the district. Not less than five days thereafter copies of the assessment list as outlined herein shall be transmitted by registered mail to the secretary of the public service commission and to the county clerk of each county in which lands of the district are situated, showing the various items of expense the assessment is designed to cover, the various funds required therefor and the distribution to said funds. In case the commission finds it necessary to change the levy as made by the board, the secretary shall transmit such

change to the county clerk in each county containing acreage within the district not later than the third Monday in August; immediately thereafter the county clerk shall cause to be entered in the assessment-book of said county or counties, and prior to the delivery of the said assessment-books to the county treasurer, the assessment-roll as transmitted by the commission, or in the event the commission has seen fit to make no change in the assessment as made by the board of directors, the original assessment-roll as submitted by the board shall be taken as the true and correct assessment against each tract for that year.

In the event that the board of directors shall fail to make such levy or make a levy insufficient in amount for the carrying out of the provisions of this act including sinking fund requirements, bond interest and annual maintenance charges, it shall be the duty of the public service commission to certify the amount of the necessary levy to the county clerk in which any part of such irrigation district is located, who shall thereupon levy the same.

In case both the board of directors and the public service commission shall fail to certify such levy to the county clerk on or before the third Monday in August, it shall be the duty of the said county clerk to enter in the assessment-books of said county the same levy as made for the preceding year, if any.

The tax thus determined by the irrigable area of each such tract shall become a lien upon the whole of said tract and shall attach thereto as of the first Monday of March of that year. The county treasurer shall thereafter collect such taxes or assessments at the same time and in the same manner as county and state taxes, and shall place said moneys in the respective funds as provided for by the levy.

In the event that the ownership of any tract of land in the district shall be divided after any tax or assessment against the same has been levied, each or either of the owners of such divisions shall be entitled to have such tax or assessment equitably apportioned to and against such divisions, so that each such owner shall be enabled to pay such tax or assessment against his portion of such tract, and have the same discharged from the lien thereof.

In the event that for any reason, any special tax or assessment hereinabove provided for cannot or shall not be levied and collected in time to meet any interest falling due on any bonds issued hereunder, then the board of directors shall have the power and authority and it shall be its duty to provide for and pay such interest when due either out of any of the funds, except sinking fund, in hand in the treasury of the district not otherwise appropriated, or by warrants (which may bear interest at a rate not to exceed six per centum per annum) drawn against the next district tax or assessment levied or to be levied. The aggregate amount of such warrants outstanding at any one time shall not exceed one dollar per irrigable acre of land in the district. Said warrants shall be in addition to those mentioned in section 9 of this act.

Amd. Sec. 8, Ch. 147, L. 1923.

3975. Limitation of powers of directors to incur debt. The board of directors or other officers of the district, shall have no power to incur any debt or liability whatever either by issuing bonds; or otherwise,

except as provided in this act; and any debt or liability incurred, in excess of such express provision, shall be and remain absolutely void, except that for the purposes of organization, or for any of the immediate purposes of this act, or to make, or purchase surveys, plans and specifications, or for stream gauging and gathering data, or to make any repairs occasioned by any calamity or other unforeseen contingency, the board of directors may, in any one year, incur an indebtedness of as many dollars as there are gross acres in the district, and may cause warrants of the district to issue therefor, bearing interest at the rate of not to exceed six per cent per annum.

Amd. Sec. 9, Ch. 147, L. 1923.

3977. Custodian of funds.

Cited in State ex rel. *Haley v. Dilworth*, 76 Mont. 218, 220, 246 Pac. 167.

3985. Transfer of moneys from construction fund.

Under this section and 3986, the board of directors of an irrigation district has no power to transfer moneys in the construction fund to any other fund, except where a surplus remains upon completion of the project. After warrants for work done had been issued to the contractor, the directors ordered a transfer to certain other funds and directed the county treasurer not to pay the warrants but to register them. The contractor brought action against the treasurer to compel their payment, whereupon the district

asked leave to file a complaint in intervention setting forth its reasons for ordering the transfer. Held, that the transfer having been unlawful the status of the construction fund was not changed by it, and payment of the warrants not having been revoked, the complaint did not state facts sufficient to entitle the district to intervene, and that refusal to permit its filing was proper. State ex rel. *Irr. Dist. v. District Court*, 75 Mont. 132, 242 Pac. 431.

3986. Transfer of moneys—Powers of directors.

Applied with section 3985 in State ex rel. *Irr. Dist. v. District Court*, 75 Mont. 132, 242 Pac. 431.

3990. Election of directors—Bond—Organization. The regular election for directors in each district shall be held annually of [on] the first Saturday in April of each year; the term of office of directors shall commence on the third Saturday in April following the election. At the first regular election following the creation of a district there shall be elected one director from the first division who shall hold his office for a term of one year; one director from the second division who shall hold his office for a term of two years; one director from the third division, who shall hold his office for a term of three years; if there be five divisions in a district, one director shall be elected from the fourth division who shall hold his office for two years and one director shall be elected from the fifth division who shall hold his office for three years and if there be seven divisions in a district, one director shall be elected from the sixth division who shall hold his office for two years and one director shall be elected from the seventh division who shall hold his office for three years. At the regular elections held thereafter each year, there shall be elected for a term of three years or until his successor is elected and qualified, one director for each vacancy caused by the expiration of the term of office of a director that year; each director so elected must be an owner of land within the division for which elected

and must be a qualified elector and a resident of the county in which the division of the district for which said director is elected, or some portion thereof, is situated.

Directors shall be chosen by the electors of the entire district, and each director-elect before taking office shall take and subscribe the official oath to be administered by the held-over members of the board, and file same in the office of the board of directors. Each member of the board of directors shall execute an official bond in the sum of two thousand (\$2,000) dollars, which said bond shall be approved by the judge of the district court of said county where the organization was effected, and shall be recorded in the office of the county recorder thereof and filed with the secretary of said board. All official bonds of directors shall be in the form prescribed by law for the official bonds of county officers.

On the third Saturday in April following each regular election, the board shall meet and organize by electing a president from their number and a secretary who may or may not be a director and who shall hold office during the pleasure of the board.

The board of directors may submit any proposal of major importance to a vote of the electors of a district at any regular or special election for decision; provided that such proposal when passed upon at an election shall be final and binding upon said board, unless reversed at a later election.

Amd. Sec. 10, Ch. 147, L. 1923.

4014. Inclusion state lands in irrigation districts.

Rep. Sec. 123, Ch. 60, L. 1927.

CHAPTER 265.

REGULATION OF REAL ESTATE BROKERS.

4056. Commissioner agriculture real estate commissioner. The commissioner of agriculture of the department of agriculture, labor and industry, of the state of Montana, shall be ex-officio real estate commissioner, with no additional compensation and shall be charged with the duty of enforcing the provisions of chapter 265 of part 3 of the Political Code, of the Revised Codes of Montana of 1921, and all other laws of the state, now or hereafter, enacted for the regulation of real estate brokers.

Amd. Sec. 1, Ch. 40, L. 1925.

For text treatment of this subject see vol. 4 Cal. Jur. 551.

4061. Disposal of fees. All fees and collections paid to the commissioner by any person, under the provisions of this act, shall be by him paid to the state treasurer on the tenth and twenty-fifth days of each calendar month, and shall be placed by the state treasurer in the general fund of the state of Montana.

Amd. Sec. 2, Ch. 40, L. 1925.

CHAPTER 266A.

REGULATION OF FARM WAREHOUSES.

4138.1. Farm warehouses, storage. That any land owner, tenant or manager of any lands in this state desiring to make a loan on wheat or any other grain, may store the same upon said land in a farm warehouse built and situated thereon and receive a warehouse certificate for same by complying with the provisions of this act.

En. Sec. 1, Ch. 59, L. 1923.

4138.2. License—Application. Any person coming within the requirements of this act, and desiring to avail himself of the provisions thereof shall file with the county clerk of the county wherein said warehouse or warehouses are located, an application for a license to store grain, and a request that inspection be made of the warehouse or warehouses and their contents as hereinafter provided. Such application shall be made under oath by the party or the agent of the party to whom the license is to be issued and shall be made upon an application form which shall be furnished the county clerk by the commissioner of agriculture, setting forth such information as may be required for the proper enforcement of this act. Such application shall be accompanied by a license fee of fifty cents which shall be paid to the county clerk, and the license, when issued, shall be good for a period of one year thereafter, unless it shall be canceled by the county clerk on the recommendation of a regularly appointed warehouse inspector after personal examination of the warehouse or warehouses as provided hereinafter.

En. Sec. 2, Ch. 59, L. 1923.

4138.3. The holder. The holder of a license as herein provided, whenever such warehouse or warehouses shall have been approved as safe storage houses for grain by the farm warehouse inspector, shall be entitled to have issued on grain stored in the farm warehouse or warehouses a warehouse certificate or certificates to be issued by the county warehouse inspector; said certificate shall be made upon a form prescribed and approved by the commissioner of agriculture, the attorney general and the bank examiner of the state of Montana.

En. Sec. 3, Ch. 59, L. 1923.

4138.4. Warehouse certificates negotiable. All warehouse certificates issued as herein provided for are and the same hereby are made negotiable, transferable and assignable, provided, when said warehouse certificate is issued to a tenant it shall be issued only for length of time of land lease, unless consent of landlord be given for extension of time. Such warehouse certificate forms shall be provided with spaces upon which shall be entered the name of the purchaser, assignee, or the person or firm making advances upon such grain, together with the amount of such advances, but when such warehouse certificates are negotiated or used as collateral for advances, the right or title of the holder to the grain described in the certificate shall not be greater than the amount of the advance together with accrued interest, and necessary costs of collection. Such certificate when recorded in the office of the county

clerk of the county where such grain is stored, shall have the force and effect of a chattel mortgage.

En. Sec. 4, Ch. 59, L. 1923.

4138.5. Inspector—Appointment—Compensation—Bond. The board of commissioners of each county is hereby authorized, and upon petition of twenty farmers resident within the county, is directed, to appoint one or more men as may be needed, who shall be competent to serve as warehouse inspectors who shall be residents of the county, and one of whom may be the county agricultural agent of such county. Each warehouse inspector shall collect from each applicant for the warehouse certificate or certificates the sum of \$5, which shall be retained by such inspector as compensation for his services, and shall be collected before the delivery to the applicant, of the warehouse certificate provided for herein. In addition the owner of the grain shall pay to the inspector the regular mileage allowed to the sheriff of his county for the number of miles necessarily traveled to make such inspection in all cases where said inspector provided his own conveyance and travels at his own expense; in such cases the inspector shall retain said fees as reimbursement for his expense. Before entering upon the discharge of his duties each inspector shall take an oath for the faithful and impartial discharge of his duties, and shall give bond to the county for the faithful discharge of his duties in a sum to be fixed by the county board, not less than \$5,000; said bond to be approved by the county board.

En. Sec. 5, Ch. 59, L. 1923.

4138.6. Duties of warehouse inspector. The duties of the farm warehouse inspector are defined as follows:

(a) Upon application as provided herein, the inspector shall proceed to make said inspection as provided herein within a reasonable time. He shall carefully examine all such warehouses as to roofs, windows, doors and other openings, foundation and construction and after such examination, shall either approve or reject such structure as a farm storage warehouse, and shall make a written report in triplicate describing the same, the original to be filed with the county clerk, the duplicate to be left with the license holder and the triplicate for the files of the inspector. Said report shall bear the signature of the license holder as well as that of the inspector.

(b) If such warehouse is approved the inspector shall then proceed to take a probe test of the bin in which grain upon which inspection is desired is located; said probe tests to be not more than three feet apart and must go to the bottom of the bin tested, provided, however, that if it be impractical to get a probe test that will go to the bottom of the bin or bins, he shall write upon the report above required, the notation "No Bottom." He will then determine the quantity of grain so inspected by measurement or weight.

(c) He shall make up a sample as required by law covering the inspection of grain, and shall forward same in a suitable container, together with his report on condition thereof, to the state inspector of grain, or to the place where nearest deputy state inspector is located, for grading.

It shall then be the duty of the state inspector, or his deputy to issue a certificate of grade, showing the kind of grain, grade, dockage and moisture content, together with the percentage of each kind of grain contained in the sample, provided it should grade mixed grain. As soon as the inspector has received the state inspector's grade, it shall then be his duty to issue to the license holder the warehouse certificate on the form as provided in this act, showing the amount, kind, grade, moisture content, percentage of mixture, etc., of the grain in question.

(d) When such examination and inspection has been completed by the inspector, he shall carefully seal all openings with a seal furnished by the state of Montana and said seal shall remain upon said warehouse until the owner shall have complied with the provisions of this act, and regulations issued under the authority thereof, providing for the removal of the grain stored in such warehouse. He shall then post on the door of said warehouse a notice to the effect that this is a farm warehouse and warning all persons under penalties of this act from in any manner tampering with the seals or in any other manner entering upon said premises without the consent of the inspector or his duly authorized agents. Any violation of this paragraph be and is hereby defined as grand larceny and subject to all the penalties attaching to the crime of grand larceny in this state.

(e) The inspector shall make weekly reports to the county clerk of the County in which he lives of all inspections made during that week a copy of which must also be mailed to the commissioner of agriculture of the state of Montana, showing the names of the parties inspected, the locations of warehouse or warehouses, the kind and amount of grain so inspected, also the amount of fees and mileage collected.

En. Sec. 6, Ch. 59, L. 1923.

4138.7. Certificate—Redemption. In case the owner of such warehouse certificate issued under the provisions of this act shall negotiate said certificate as collateral to loans or advances, the value of which is fixed by a note attached to this certificate and shall fail to pay said amount when due then and in that case the holder of his certificate shall be entitled to recover under the chattel mortgage law of this state and shall be entitled to all protection in matters of this kind, the same as though the obligation were a bona fide chattel mortgage. It shall be the duty of the commissioner of agriculture to prescribe regulations governing the manner of delivery of such stored grain, and the settlement of advances and other charges against it, to the end that the interest of all parties shall be fully protected, but this shall not be construed as giving the commissioner of agriculture the power to make rules and regulations which would in any manner endanger the rights of those making loans and advances on warehouse certificates in accordance with this act.

En. Sec. 7, Ch. 59, L. 1923.

4138.8. Insurance at full value. Any person to whom warehouse certificates are issued shall keep the grain in such warehouse or warehouses owned or controlled by him insured against loss by fire, tornado

and windstorm in some good and responsible insurance company to the extent of the full insurance value thereof and such insurance shall be written before such certificates are negotiated.

En. Sec. 8, Ch. 59, L. 1923.

4138.9. Co-operative associations not within act. Nothing in this act shall be construed to prevent farmers in any county or community from forming among themselves local co-operative credit associations whenever such associations are required in order to secure advances upon grain stored in farm warehouses as contemplated in this act and such associations shall be entitled to full protection of this act, the same as any other person, firm, corporation or bank, making loans and advances under this act.

En. Sec. 9, Ch. 59, L. 1923.

CHAPTER 267.

REGULATION OF TITLE ABSTRACTORS.

4143. Renewal of bond annually—Additional bond. The bond or undertaking herein provided for shall be in full force and effect for a period of one year, and shall be renewed annually by a continuation certificate, such a continuation certificate, however, shall not increase the amount of the liability under the original bond, but the attorney general may, upon complaint of any reputable citizen, require such abstractor, upon ten days' written notice, to furnish a new or additional bond, or to show cause before the state treasurer why he or it has not done so, and if, within said ten days, no new or additional bond has been filed, with approved sureties, and not any sufficient reason is shown to the state treasurer why a new bond should not be required, then the state treasurer, shall, in writing annul the certificate of authority of such abstractor.

Amd. Sec. 1, Ch. 60, L. 1925.

CHAPTER 270.

REGULATION OF WAGE BROKERS.

4173. Wage broker to procure license and give bond.

In an action by a bank as assignee of a contractor for a balance due on a contract assigned as security for a loan, an allegation in the answer that the assignment had not been acknowledged nor filed with the county clerk as required by sections 4173-4182, regulating the business of wage brokers, was properly stricken, it appearing affirmatively that the assignor was neither a wage-earner nor an employee but a contractor, and therefore the assignee was not a wage broker. *Security State Bank of Roy v.*

Melchert et al., 67 Mont. 535, 216 Pac. 340.

One who parts with money either directly or indirectly, in consideration of the assignment of wages, is a wage broker within the meaning of this and following sections. *Costello v. Great Falls Iron Works*, 59 Mont. 417, 196 Pac. 982.

An assignment to a wage broker of wages not theretofore earned but thereafter to be earned, is void as against the creditors of the assignor. *Idem*.

4175. Wage broker defined.

Cited in *Security State Bank of Roy v. Melchert et al.*, 67 Mont. 535, 539, 216 Pac. 340.

CHAPTER 273.

REGULATION OF SALE OF GASOLINE, KEROSENE AND OILS.

4193 to 4208 inclusive. Relating to the regulation of the sale of gasoline, kerosene and oils.

Rep. Sec. 23, Ch. 109, L. 1927.

4208. State gasoline inspection fund.

Rep. Sec. 1, Ch. 37, L. 1925.

CHAPTER 276.

STANDARD APPLE BOX.

4268. Classification and quality of apples. That the apples contained within the box when so packed and offered for sale shall be reasonably uniform in size and free from worms, scale or fungus disease, except as otherwise specified.

Amd. Sec. 1, Ch. 118, L. 1923.

4270. Grades and standards of apples defined. Boxes packed with apples and marked "standard" shall be deemed to be misbranded within the meaning of this act.

First. If the size of the box does not conform to the requirements of section 4265 of this code.

Second. If the markings of the box do not conform to the markings required by section 4267 of this code.

Third. If the size and condition of the apples does not conform to the requirements of section 4268 of this code.

Fourth. That the grade of apples contained in the box or boxes shall be as follows, to wit: Extra fancy, fancy, "C" grade, combination grade and orchard run grade.

"Extra fancy" apples shall be mature, clean, smooth, well-formed apples only, free from all insect pests, diseases, bruises and holes, spray burn, limb rub, visible water-core, skin punctures or skin broken at stem, shall be free from russetting except russetting within the cavity of the stem shall be permitted.

"Fancy" apples are defined as apples complying with the standard of the extra fancy except that leaf rub, slight scratches and russetting shall be permitted up to five per cent of the surface of the apple. Apples carrying extra fancy color requirements characteristic of the variety showing either fine pin point scab in cavity or basin; limb rub, not to exceed one-half inch in diameter; or two healed-over worm stings may be permitted in this grade.

"C" grade. Apples are defined as all those merchantable apples which are mature, free from infection, soft bruises and broken skin. Provided, that this grade may include healed-over stings and scab spots not to exceed one-quarter inch in the aggregate. Color requirements not considered in this grade. Apples in this grade shall not be marked "choice."

"Combination grade." When extra fancy and fancy apples are packed together the boxes must be marked "combination extra fancy and fancy." When fancy and "C" grade are packed together the boxes must be marked "combination fancy and 'C' grade." Combination grades must contain at least twenty-five (25) per cent of apples which belong to the higher grade in the combination.

"Orchard run" grade shall consist of extra fancy, fancy and "C" grade apples packed in combination. Boxes so marked must contain at least fifteen (15) per cent of apples of extra fancy grade and not more than fifty (50) per cent of "C" grade. No apples failing to meet the requirements of "C" grade shall be permitted in this grade.

No apples smaller than two (2) inches in diameter shall be permitted in any grade. Small apples which are under the size requirements as prescribed may be shipped marked "small," provided such apples are free from injurious insect pests and diseases.

In order to provide for variations incident to commercial grading and handling a tolerance of ten (10) per cent for a total of all defects from the standard of the grade shall be allowed.

Amd. Sec. 2, Ch. 118, L. 1923.

4270.1. Penalty for failure to inspect. Any person or persons failing to make the inspections as provided in this act shall be deemed guilty of malfeasance of office.

En. Sec. 2, Ch. 118, L. 1923.

4272. Penalty for violation of act. No person, firm, company, or organization shall sell or offer for sale, or shipment within or without the state of Montana, apples branded or packed in boxes in violation of the provisions of this act. Any person, firm, company, or organization who shall knowingly sell or offer for sale, or shipment within or without the state of Montana, apples branded or packed in boxes in violation of the provisions of this act, shall be guilty of a misdemeanor and on conviction thereof shall be subject to a fine of not less than ten dollars or more than fifty dollars.

Amd. Sec. 1, Ch. 81, L. 1925.

CHAPTER 278.

TIME.

4280. The week.

Cited in *Garry v. Martin*, 70 Mont. 587, 592, 227 Pac. 573.

Cited as section 2030, Revised Codes,

in *State ex rel. Stevens v. McLeish*, 59 Mont. 527, 531, 198 Pac. 357.

PART IV.

Government of Counties, Cities and Towns.

CHAPTER 1.

DEFINITIONS, COURSES AND SURVEYS.

4293. County defined.

Cited in *State v. McGraw*, 74 Mont. 152, 155, 240 Pac. 812; *Bignell et al. v. Cummins*, 69 Mont. 294, 299, 222 Pac. 797.

4304. Collection of old taxes when county is divided or boundary altered.

Cited as section 2850, Revised Codes, in *County of Hill v. County of Liberty*, 62 Mont. 15, 20, 203 Pac. 500.

CHAPTER 2.

COUNTY BOUNDARIES.

4318. Fergus county. Beginning at the middle of the main channel of the Missouri river opposite the middle of the main channel of the Musselshell river; running thence up the middle of the main channel of the Musselshell river to its intersection with the township line between townships eleven (11) and twelve (12) north; thence west along said township line to the line between ranges eighteen (18) and nineteen (19) east; thence south along said range line to the northeast corner of section twenty-five (25), township eleven (11) north, range eighteen (18) east; thence west along the north line of sections twenty-five (25), twenty-six (26), twenty-seven (27), twenty-eight (28), twenty-nine (29) and thirty (30), township eleven (11) north, ranges eighteen (18) and seventeen (17) and sixteen (16) east, to the southeast corner of section nineteen (19), township eleven (11) north, range sixteen (16) east; thence north along the east boundary of sections nineteen (19), eighteen (18), seven (7) and six (6) in said township eleven (11) north of range sixteen (16) east, to the northeast corner of the southeast quarter of section six (6) in said township eleven (11) north of range sixteen (16) east; thence west to the northwest corner of said southeast quarter of section six (6), in said township and range; thence north to the southwest corner of the southeast quarter of section nineteen (19), in township twelve (12) north, range sixteen (16) east; thence west to the southeast corner of section twenty-three (23), township twelve (12) north, range fifteen (15) east; thence north to the northeast corner of said section twenty-three (23), township twelve (12) north, range fifteen (15) east; thence west to the southeast corner of the southwest quarter of section fourteen (14), township twelve (12) north, range fifteen (15) east; thence north to the northeast corner of said southwest quarter of section fourteen (14), township twelve (12) north, range fifteen (15) east; thence west to the southeast corner of the northeast quarter of section sixteen (16), township twelve

(12) north, range fifteen (15) east; thence north to the northeast corner of section sixteen (16) in township twelve (12) north, range fifteen (15) east; thence west to the southeast corner of the southwest quarter of the southeast quarter (SW. $\frac{1}{4}$ SE. $\frac{1}{4}$) of section nine (9) in township twelve (12) north, range fifteen (15) east; thence north to the northeast corner of the northwest quarter of the southeast quarter (NW. $\frac{1}{4}$ SE. $\frac{1}{4}$) of section four (4), township twelve (12) north, range fifteen (15) east; thence east to the southeast corner of the southeast quarter of the northwest quarter (SE. $\frac{1}{4}$ NW. $\frac{1}{4}$) of section two (2), township twelve (12) north, range fifteen (15) east; thence north to the boundary line between townships twelve (12) and thirteen (13) north; thence east along said boundary line between townships twelve (12) and thirteen (13) north to the southeast corner of section thirty-four (34), township thirteen (13) north, range fifteen (15) east; thence north to the northeast corner of section twenty-seven (27), township thirteen (13) north, range fifteen (15) east; thence east to the southeast corner of the southwest quarter of the southwest quarter (SW. $\frac{1}{4}$ SW. $\frac{1}{4}$) of section twenty-three (23), township thirteen (13) north, range fifteen (15) east; thence north to the northeast corner of the northwest quarter of the northwest quarter (NW. $\frac{1}{4}$ NW. $\frac{1}{4}$) of section twenty-three (23), township thirteen (13) north, range fifteen (15) east; thence east to the southeast corner of section fourteen (14), township thirteen (13) north, range fifteen (15) east; thence north to the northeast corner of said section fourteen (14), township thirteen (13) north, range fifteen (15) east; thence east to the boundary line between ranges fifteen (15) and sixteen (16) east; thence north along said boundary line to the northeast corner of township sixteen (16) north, range fifteen (15) east; thence west to the southeast corner of township seventeen (17) north, range fourteen (14) east; thence north to the northeast corner of section twenty-four (24), township seventeen (17) north, range fourteen (14) east; thence west to the northwest corner of section nineteen (19), township seventeen (17) north, range fourteen (14) east; thence north to the northeast corner of township seventeen (17) north, range thirteen (13) east; thence west to the southeast corner of township eighteen (18) north, range twelve (12) east; thence north to the northeast corner of township eighteen (18) north, range twelve (12) east; thence west to the southeast corner of section thirty-two (32), in township nineteen (19) north, range twelve (12) east; thence north along the east boundary line of sections thirty-two (32), twenty-nine (29), twenty (20), and seventeen (17), all in township nineteen (19) north, range twelve (12) east to the northeast corner of section seventeen (17), in township nineteen (19) north, range twelve (12) east; thence east along the section lines to a point at the middle of Arrow creek; thence in a northeasterly direction down the middle of Arrow creek to a point in the center of the main channel of the Missouri river opposite the mouth of Arrow creek; thence down the middle of the main channel of the Missouri river to the point of beginning. The county seat is Lewistown, Montana.

Amd. Sec. 1, Ch. 93, L. 1925.

The title to chapter 93, L. 1925: "An act to amend sections 4318 and 4327 of the Revised Codes of 1921, relating to changing the boundaries of Fergus and

Judith Basin counties," the effect of section 1 of which act was to include within the boundaries of Fergus county the entire county of Petroleum created in February, 1925, thus abolishing the latter

county, is insufficient to meet the requirement of section 23, article V of the constitution rendering the section invalid.

State ex rel. Foot v. Burr et al., 73 Mont. 586, 238 Pac. 585.

4327. Judith Basin county. Beginning at the northeast corner of township sixteen (16) north, range fifteen (15) east; thence west to the southeast corner of township seventeen (17) north, range fourteen (14) east; thence north to the northeast corner of section twenty-four (24), in township seventeen (17) north, range fourteen (14) east; thence west to the northwest corner of section nineteen (19), township seventeen (17) north, range fourteen (14) east; thence north to the northeast corner of township seventeen (17) north, range thirteen (13) east; thence west to the southeast corner of township eighteen (18) north, range twelve (12) east; thence north to the northeast corner of township eighteen (18) north, range twelve (12) east; thence west to the southeast corner of section thirty-two (32), in township nineteen (19) north, range twelve (12) east; thence north along the east boundary line of sections thirty-two (32), twenty-nine (29), twenty (20) and seventeen (17), all in township nineteen (19) north, range twelve (12) east to the northeast corner of section seventeen (17), in township nineteen (19) north, range twelve (12) east; thence west along the north boundary line of sections seventeen (17), and eighteen (18), in township nineteen (19) north, range twelve (12) east; thence west along the north boundary line of sections thirteen (13), fourteen (14), fifteen (15), sixteen (16), seventeen (17), and eighteen (18), in township nineteen (19) north, ranges eleven (11), ten (10), and nine (9) east, to the northwest corner of section eighteen (18), township nineteen (19) north, range nine (9) east; thence south to the southeast corner of township nineteen (19) north, range eight (8) east; thence west to the southwest corner of said township nineteen (19) north, range eight (8) east; thence south along the range line between ranges seven (7) and eight (8) east, a distance of four and one-fourth ($4\frac{1}{4}$) miles, more or less, to the southeast corner of the northeast quarter of the northeast quarter (NE. $\frac{1}{4}$ NE. $\frac{1}{4}$) of section twenty-five (25), township eighteen (18) north, range seven (7) east; thence west one-fourth ($\frac{1}{4}$) mile to the southwest corner of said northeast quarter of the northeast quarter (NE. $\frac{1}{4}$ NE. $\frac{1}{4}$) of section twenty-five (25); thence north a distance of three-fourths ($\frac{3}{4}$) of a mile, to the northeast corner of the northwest quarter of the southeast quarter (NE. $\frac{1}{4}$ SE. $\frac{1}{4}$) of section twenty-four (24), township eighteen (18) north, range seven (7) east; thence west a distance of three-fourths ($\frac{3}{4}$) of a mile to the quarter ($\frac{1}{4}$) corner on the west boundary of said section twenty-four (24); thence south a distance of four (4) miles, more or less, to the quarter ($\frac{1}{4}$) corner on the west boundary of section twelve (12), township seventeen (17) north, range seven (7) east; thence east a distance of one-half ($\frac{1}{2}$) mile to the center of said section twelve (12); thence south one (1) mile to the center of section thirteen (13), township seventeen (17) north, range seven (7) east; thence east one-half ($\frac{1}{2}$) mile to the quarter ($\frac{1}{4}$) corner on the east boundary of said section thirteen (13), township seventeen (17) north, range seven (7) east; thence south along the boundary line between ranges seven (7) and eight (8), as corrected by the United States government survey thereof, to the southwest corner of township sixteen (16)

north, range eight (8) east; thence east to the southeast corner of said township sixteen (16) north, range eight (8) east; thence south along the boundary line between ranges eight (8) and nine (9) east, as corrected by the United States government survey thereof, to the summit of the main range of the Little Belt mountains; thence in a southeasterly direction along the summit of the main range of said Little Belt mountains to the boundary line between ranges ten (10) and eleven (11) east; thence easterly along the divide between the waters of Musselshell river and Judith river to the most easterly point of the Little Belt mountains at Judith Gap; thence east to the southeast corner of section nineteen (19), township eleven (11) north, range sixteen (16) east; thence north along the east boundary of sections nineteen (19), eighteen (18), seven (7), and six (6), in said township eleven (11) north, range sixteen (16) east; to the northeast corner of the southeast quarter of section six (6), in said township eleven (11) north, range sixteen (16) east; thence west to the northwest corner of said southeast quarter of said section six (6) in said township and range; thence north to the southwest corner of the southeast quarter of section nineteen (19), in township twelve (12) north, range sixteen (16) east; thence west to the southeast corner of section twenty-three (23), in township twelve (12) north, range fifteen (15) east; thence north to the northeast corner of said section twenty-three (23), in township twelve (12) north, range fifteen (15) east; thence west to the southeast corner of the southwest quarter of section fourteen (14), in township twelve (12) north, range fifteen (15) east; thence north to the northeast corner of said southwest quarter of section fourteen (14), in township twelve (12) north, range fifteen (15) east; thence west to the southeast corner of the northeast quarter of section sixteen (16), in township twelve (12) north, range fifteen (15) east; thence north to the northeast corner of section sixteen (16) in township twelve (12) north, range fifteen (15) east; thence west to the southeast corner of the southwest quarter of the southeast quarter (SW. $\frac{1}{4}$ SE. $\frac{1}{4}$) of section nine (9), in township twelve (12) north, range fifteen (15) east; thence north to the northeast corner of the northwest quarter of the southeast quarter (NW. $\frac{1}{4}$ SE. $\frac{1}{4}$) of section four (4), in township twelve (12) north, range fifteen (15) east; thence east to the southeast corner of the southeast quarter of the northwest quarter (SE. $\frac{1}{4}$ NW. $\frac{1}{4}$) of section two (2), in township twelve (12) north, range fifteen (15) east; thence north to the boundary line between townships twelve (12) and thirteen (13) north; thence east along said boundary line between townships twelve (12) and thirteen (13) north, to the southeast corner of section thirty-four (34), in township thirteen (13) north, range fifteen (15) east; thence north to the northeast corner of section twenty-seven (27), township thirteen (13) north, range fifteen (15) east; thence east to the southeast corner of the southwest quarter of the southwest quarter (SW. $\frac{1}{4}$ SW. $\frac{1}{4}$) of section twenty-three (23), in township thirteen (13) north, range fifteen (15) east; thence north to the northeast corner of the northwest quarter of the northwest quarter (NW. $\frac{1}{4}$ NW. $\frac{1}{4}$) of section twenty-three (23), in township thirteen (13) north, range fifteen (15) east; thence east to the southeast corner of section fourteen (14), township thirteen (13) north, range fifteen (15) east; thence north to the northeast corner of said section four-

teen (14), in township thirteen (13) north, range fifteen (15) east; thence east to the boundary line between ranges fifteen (15) and sixteen (16) east; thence north along said boundary line to the place of beginning.

Amd. Sec. 2, Ch. 93, L. 1925.

4327.1. Boundaries of Lake county. Commencing at the northwest corner of township 25 north, range 22 west, M. M., thence east on said township line to the east shore of Flathead lake; thence in a general northerly direction along said lake shore to the meander corner on the south line of section 12, township 26 north, range 20 west, Montana meridian; thence east along the south line of said section 12, township 26 north, range 20 west, and continuing east along the south line of section 7, township 26 north, range 19 west, to the southeast corner of said section; thence north along the east side of said section 7 to the northeast corner of said section; thence east along the south line of section 5, township 26 north, range 19 west, to the southeast corner of said section 5; thence north along the east side of said section 5 to the north line of township 26 north, range 19 west M. M.; thence east along the north line of township 26 north, range 19 west, and said township line extended to the summit of the Swan range of the Rocky mountains; thence in a general southeasterly direction along the Swan divide between the Swan river and the South Fork of the Flathead river, approximately three miles, to Red Owl mountain; thence continuing southeasterly and southerly along the summit of said divide, approximately 20 miles to Swan peak; thence southerly along said divide to a point where a line so drawn intersects the north boundary of Missoula county; thence west along the north boundary of Missoula county to the summit of the Mission range; thence in a southerly and southeasterly direction along the summit of the Mission range to a point where the summit of the Mission range intersects the west line of township 17 north, range 17 west, thence south along said township line to the southeast corner of township 17 north, range 18 west; thence west along the south line of said township to the northwest corner of township 16 north, range 18 west; thence south about three miles to the southeast corner of section 13, township 16 north, range 19 west; thence westerly along the mid-township line of township 16 north, range 19 west and continuing westerly along the mid-township line of township 16 north, range 20 west, to the point where said line intersects the boundary division line of Sanders and Missoula counties; thence in a northerly direction to the northwest corner of township 16 north, range 20 west; thence west to the southeast corner of township 17 north, range 21 west; thence north along township line to the northeast corner of township 18 north, range 21 west; thence due west along the north line of said township to the center of the main channel of the Flathead river; thence following the center line of the main channel of the Flathead river in a northerly direction to a point where it intersects the south line of the north tier of sections of township 21 north, thence due west along section line to the southeast corner of section 6, township 21 north, range 23 west; thence due north along section line to the southeast corner of section 18, township 23 north, range 23 west; thence west about one mile to the southwest corner of said section; thence north along township line

to the north line of township 23 north, range 23 west; thence east along the north line of township 23 north, of range 23 west, to the northeast corner of said township; thence north along range line to the northeast corner of township 24, range 23 west; thence west along north line of township 24 north, to the southwest corner of township 25, range 22 west; thence north to the place of beginning.

Lake County was created by petition and election effective August 10th, 1923, L. 1923, p. 623.

4337.1. Petroleum county. Beginning at a point at the middle of the main channel of the Missouri river opposite the middle of the main channel of the Musselshell river, running thence up the middle of the main channel of the Musselshell river to its intersection with the township line between townships 11 and 12 north; thence west along said township line to the range line between ranges 24 and 25 east, which is the southwest corner of township 12 north of range 25 east of the Montana Principal Meridian; thence north to the northwest corner of said township; thence east to the southwest corner of township 13 north of range 25 east of the Montana principal meridian; thence north to the southeast corner of township 16 north of range 24 east, Montana principal meridian; thence west to the southwest corner of said township and range; thence north to the northwest corner of said township and range; thence east to the southwest corner of township 17 north of range 24 east; thence north to the northwest corner of said township and range; thence east to the southwest corner of township 18 north of range 25 east; thence north approximately two and one-half miles to the quarter corner on the west side of section 19 in township 18 north of range 25 east; thence east along the median line a distance of approximately twelve miles to the quarter corner on the east line of section 24 in township 18 north of range 26 east; thence north approximately one-half mile to the southwest corner of section 18 in township 18 north of range 27 east; thence east to the southeast corner of said section in said township and range approximately one mile; thence north approximately fifteen miles to the northeast corner of section 6 in township 20 north of range 27 east; thence along the township line between townships 20 and 21 north to the southwest corner of township 21 north of range 27 east; thence north along the range line between ranges 26 and 27 east to the intersection of said range line with the middle of the main channel of the Missouri river; thence down stream along the middle of the main channel of the Missouri river to the place of beginning.

Petroleum County was created by petition and election, effective February 22, 1925, L. 1925, p. 505.

4358.1. Establishment boundary line Yellowstone and Carbon counties. That the boundary line between Yellowstone county and Carbon county of the state of Montana, be and the same is hereby established and shall hereafter be known as follows:

Beginning at that point on the Yellowstone river where the west line of section twenty-one (21), township two (2) south, range twenty-four (24) east, intersects the said river, thence south along the west line of section twenty-one (21) and the west line of section twenty-eight (28)

and thirty-three (33) in said township to that point on the Clark Fork river where it is intersected by said line; thence in a southwesterly direction along the said Clark Fork river to that point thereon where it is intersected by the west line of section eight (8), township three (3) south, range twenty-four (24) east; thence south along the west line of said section eight (8), and the west line of sections seventeen (17) and twenty (20) of said township to the southwest corner of said section twenty (20) township three (3) south, range twenty-four (24) east; thence east along the south line of sections twenty (20) and twenty-one (21) of said township to the southeast corner of said section twenty-one (21) of township three (3) south, range twenty-four (24) east; thence south along the west line of sections twenty-seven (27) and thirty-four (34) of said township to the southwest corner of said section thirty-four (34), township three (3) south, range twenty-four (24) east; thence east along the south line of said township to the southeast corner thereof; thence south along the line between ranges twenty-four (24) and twenty-five (25) east to the southeast corner of section twenty-four (24) township four (4) south, range twenty-four (24) east; thence east along the north line of sections thirty (30) and twenty-nine (29), township four (4) south, range twenty-five (25) east to an intersection with the west boundary line of the Crow Indian reservation, township four (4) south range twenty-five (25) east; this point being common to the boundary lines of Carbon county, Yellowstone county and Big Horn county.

En. Sec. 1, Ch. 30, L. 1925.

4358.2. Alteration boundaries Yellowstone County. The boundaries of Yellowstone county are hereby altered to conform to the boundaries of Carbon county as established by this act.

En. Sec. 2, Ch. 30, L. 1925.

CHAPTER 4.

LOCATION OF COUNTY SEATS.

4386. Canvass of returns—Result of election.

Held, on appeal from an order granting a temporary restraining order enjoining the removal of a county seat, that the provisions of this section that within ten days after the declaration of the result of a county seat election the records and county offices must be removed to the new county seat, and of other sections imposing a penalty upon officers who fail to keep their offices at the permanent county seat, etc., are suspended pending final determination of the election contest. *Atkinson v. Roosevelt County et al.*, 66 Mont. 411, 214 Pac. 74.

Where the board of commissioners of a county a portion of which was thereafter included in a new county, in order to obtain favorable action by the electors of that portion on a proposed issue of road bonds, passed a resolution, amount-

ing to a promise merely, that in the event the bonds were authorized, a certain proportion of the receipts would be devoted to road improvement in their district, their breach of trust in thereafter failing to carry out their promise could not be remedied by writ of mandate to compel the board of adjusters of the indebtedness between the old and the new county to charge the old county with the amount the district should have received under the resolution, the New Counties Act not authorizing the adjusters to take such action. *State ex rel. Judith Basin County v. Poland et al.*, 61 Mont. 600, 203 Pac. 352.

For text treatment of this subject see vol. 7 Cal. Jur. 411.

CHAPTER 5.

CREATION OF NEW COUNTIES BY PETITION AND ELECTION.

4390. Creation of new counties—Debts and assets prorated.

Where the county commissioners of one of two counties out of which a new county was created, instead of dividing the new county into a convenient number of school districts as required by the New Counties Act, established a district a portion of which lay in the new county and a portion in one of the old counties,

their action was a nullity. *State ex rel. School Dist. No. 28 v. Urton*, 76 Mont. 458, 248 Pac. 369.

Cited in *State ex rel. Missoula County v. Brown*, 73 Mont. 371, 373, 236 Pac. 548; *State ex rel. Foot v. Burr et al.*, 73 Mont. 586, 238 Pac. 585; *Garry v. Martin*, 70 Mont. 587, 590, 227 Pac. 573.

4393. Petition for creation of new county—Attached affidavits.

Under the rule that where a notice is required to be published at least once a week for a period next preceding a certain date, the word "for" means "throughout" or "during the continuance of" the period prescribed, that the provision of this section, requiring publication of notice of hearing of a petition for the creation of a new county "at least once a week for two weeks next preceding the date fixed for such hearing" means that two full weeks' notice, fourteen days, shall be given, and therefore publication made for a shorter period of time is insufficient. *Garry v. Martin*, 70 Mont. 587, 227 Pac. 573.

The board of county commissioners is without jurisdiction to proceed with a hearing of a petition for the creation of a new county unless publication of the notice as required by this section has been made; if not so made and the board proceeds with the hearing, its action is void. *Garry v. Martin*, 70 Mont. 587, 227 Pac. 573.

Under this section petitions for the exclusion of territory and protests against the exclusion must, but protests against the creation of a new county need not, be filed at least one day before the date set for hearing to entitle them to consideration by the board of county commissioners, it being sufficient if such

latter protests are filed on or before the time fixed for the hearing. *State ex rel. Faragher v. Moulton et al.*, 68 Mont. 219, 216 Pac. 804.

Designation by the county clerk of a newspaper by the wrong name, in which to publish notice of the date of hearing of petitions for the creation of a new county, amounted to noncompliance with the statutory direction in that regard. *State ex rel. Stevens v. McLeish*, 59 Mont. 527, 198 Pac. 357.

Publication of notice of hearing on petitions for the creation of a new county required by this section, in certain newspapers for at least once a week for two weeks next preceding the date fixed for it, is jurisdictional, and therefore failure of publication in one of the papers designated in the week immediately preceding the date of the hearing was fatal to jurisdiction and rendered all subsequent proceedings, including the election, invalid. *State ex rel. Stevens v. McLeish*, 59 Mont. 527, 198 Pac. 357.

The requirement of this section that notice of the hearing of new county petitions shall be published "at least once a week for two weeks next preceding the date fixed for such hearing" means two weeks immediately preceding the hearing. *State ex rel. Stevens v. McLeish*, 59 Mont. 527, 198 Pac. 357.

4394. Duty of commissioners when findings justify new county, etc.

Cited in *State ex rel. School District No. 28 v. Urton*, 76 Mont. 458, 460, 248

Pac. 369; *Garry v. Martin*, 70 Mont. 587, 590, 227 Pac. 573.

4395. Measures to be taken after election—Officers—Effect of adverse vote.

Under this section a new county is not fully created until the expiration of ninety days after the date of the filing with the secretary of state of the certified copy of the resolution of the board

of county commissioners of the parent county declaring it duly formed as a county. *County of Hill v. County of Liberty*, 62 Mont. 15, 203 Pac. 500.

4396.1. Election state senator on creation new county. At the special election held for the purpose of voting on the creation of a new

county, a state senator shall be elected, who will hold office until the next general election.

En. Sec. 1, Ch. 106, L. 1925.

4396.2. Election county commissioners on creation new county. At the special election held for the purpose of voting on the question of the creation of a new county, a board of county commissioners shall be elected, who shall hold office until the next general election.

En. Sec. 2, Ch. 106, L. 1925.

4397. Commission to adjust indebtedness of old and new counties.

Cited in *State ex rel. Missoula County v. Brown et al.*, 73 Mont. 371, 373, 236 Pac. 548.

4398. Determination of amount of indebtedness and value of property—Taxation.

Since a completed and used bridge belongs to the state and therefore is not "property of the county" within the meaning of section 3, article XVI, constitution, prescribing the method by which, in the creation of a new county out of an old one the proportion of the net indebtedness of the old county chargeable to the new one shall be ascertained, the legislature was without power to authorize the commissioners appointed to adjust the indebtedness between a new and an old county to take into consideration steel bridges constructed and in use for a period of less than ten years, in determining the value of county property. *State ex rel. Missoula County v. Brown et al.*, 73 Mont. 371, 236 Pac. 548.

Under the New Counties Act, providing for the apportionment of property and debts between a new and the old county or counties out of which it is created, taxes upon property situated in that portion of the parent county or counties incorporated in the new county, which are delinquent upon creation of the new one or were delinquent and remain unpaid for previous years, are collectible by and belong to the new county. *County of Hill v. County of Liberty*, 62 Mont. 15, 236 Pac. 500.

Delinquent taxes paid on property incorporated in a new county, in the in-

terim between the passing of the resolution by the board of commissioners of the parent county and the expiration of the ninety-day period after its filing with the secretary of state, belong to the parent and not to the new county. *County of Hill v. County of Liberty*, 62 Mont. 15, 203 Pac. 500.

Public records of a county are not county property to be taken into consideration by a board of adjustment of county indebtedness between an old and a new county. *State v. Poland et al.*, 61 Mont. 600, 203 Pac. 352.

A completed bridge used by the public is a part of the public highway and belongs to the state, and is therefore not county property such as may be considered in adjusting the indebtedness between an old and a new county. *State v. Poland et al.*, 61 Mont. 600, 203 Pac. 352.

A partly finished bridge, constructed with funds obtained from a bond issue, is not such county property as it may sell, and therefore cannot be taken into consideration as county property in the adjustment of indebtedness between an old and a new county. *State v. Poland et al.*, 61 Mont. 600, 203 Pac. 352.

Cited in *State ex rel. Cascade County v. Poland et al.*, 66 Mont. 286, 213 Pac. 900.

4400. Assessment and collection of taxes.

Cited as section 9, chapter 226, L. 1919, in *County of Hill v. County of Liberty*, 62 Mont. 15, 18, 203 Pac. 500.

4402. Records, books and papers. The board of county commissioners of any new county formed as aforesaid must provide suitable books, and have transcribed from the records of the old county or counties all such parts thereof as relate to or affect property, or the title thereof, situated in the new county, and said records, when so transcribed

and certified, as herein provided, shall have the same force and effect as such original records; the said county commissioners shall have full power and authority to contract for transcribing of records as now provided by law; provided, that all chattel mortgages, renewals of chattel mortgages, articles of incorporation, contract notes, sheriff certificates of sale, liens, and original affidavits of registration, which may affect or relate to property or persons situate within the new county, shall be by the county clerk of the old county delivered to the county clerk of the new county, and be preserved by said county clerk of the new county as permanent files of such new county; and provided, further, that the files of all actions in the office of the clerk of the district court of the old county, whether reduced to judgment or pending, for the recovery of the possession of, quieting the title to, or for the enforcement of liens upon, or any other actions affecting real estate lying wholly in the new county shall be, by the clerk of the district court of the old county, delivered to the clerk of the district court of the new county to be kept and preserved by him as permanent files of such new county, to the end that only the minutes and other entries in books kept by the clerk of the district court need be transcribed.

Amd. Sec. 1, Ch. 75, L. 1925.

4403. Transfer of pending actions. All actions pending in the district court of the old county or counties for the recovery of the possession of, quieting title to, or the enforcement of liens upon, or any other actions affecting real estate lying wholly in the new county shall forthwith upon the delivery of the files in said action to the clerk of the district court of the new county, as provided in section 1, hereof, be transferred to the district court in which the new county may be attached for judicial purposes, and thereafter shall be subject to the same laws as if said action had been originally brought in the district court of the new county.

Amd. Sec. 2, Ch. 75, L. 1925.

CHAPTER 8.

GENERAL POWERS AND LIMITATIONS UPON COUNTIES.

4441. Every county a body corporate.

In an action by sureties to establish a preference upon the assets of an insolvent bank to satisfy the amount which they were required to pay a county for funds on deposit therein at the time of the suspension, in the absence of constitutional or statutory provisions conferring the right of sovereignty upon counties, they do not possess it. *Bignell et al. v. Cummins*, 69 Mont. 294, 36 A. L. R. 634, 222 Pac. 797.

Aside from the powers granted counties by statute and those necessarily implied from the powers expressed, they have none, and where there is a fair and rea-

sonable doubt as to the existence of a particular power, it must be resolved against them and the power denied. *Sullivan v. Big Horn County*, 66 Mont. 45, 212 Pac. 1105.

Cited in *Franzke v. Fergus County et al.*, 76 Mont. 150, 155, 245 Pac. 962; *State v. McGraw*, 74 Mont. 152, 155, 240 Pac. 812; *State Bank of Outlook v. Sheridan County*, 72 Mont. 1, 6, 230 Pac. 1097.

For text treatment of this subject see vol. 7 Cal. Jur. 420.

4444. Enumeration of powers.

Applied with section 4465 in *Franzke v. Fergus County et al.*, 76 Mont 150, 245 Pac. 962. Cited in *Gregg v. Bayers*, 73 Mont. 165, 167, 235 Pac. 337; *Sullivan v. Big Horn County*, 66 Mont. 45, 47, 212 Pac. 1105.

CHAPTER 9.

COUNTY COMMISSIONERS—ORGANIZATION, MEETINGS AND COMPENSATION.

4459. Clerk.

This and section 4460 were cited in *State ex rel. Lockwood v. Tyler*, 64 Mont. 124, 131, 208 Pac. 1081.

4460. Duties of clerk.

The duty of the county clerk to issue warrants for claims passed upon by the board of county commissioners being ministerial only, he is not clothed with supervisory power to either question or determine the legality of the claims,

except where they are void upon their face as without the jurisdiction of the board to pass upon them. *State ex rel. Lockwood v. Tyler*, 64 Mont. 124, 208 Pac. 1081.

4461. Duties of board.

This section providing that a board of county commissioners must cause a minute-book to be kept in which must be recorded all its orders, decisions and proceedings does not make such record the only evidence admissible to prove the action of the board nor prohibit oral testimony as to what was actually done, and,

when so proved, its action has the same effect as though shown by a minute entry. *State ex rel. Rankin v. Madison State Bank*, 77 Mont. 498, 251 Pac. 548.

Cited in *State ex rel. Urton v. American Bank & Trust Co.*, 75 Mont. 369, 375, 243 Pac. 1093.

CHAPTER 10.

GENERAL POWERS OF BOARDS OF COUNTY COMMISSIONERS.

4465. General and permanent powers. The board of county commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law:

1. To supervise the official conduct of all county officers, and officers of all districts and other subdivisions of the county, charged with assessing, collecting, safekeeping, management, or disbursement of the public revenues; see that they faithfully perform their duties; direct prosecutions for delinquencies; and, when necessary, require them to renew their official bonds, to make reports, and to present their books and accounts for inspection;

2. To divide the counties into township, school, road, and other districts required by law, change the same, and create others as convenience requires, by consolidation of two (2) or more townships, or otherwise;

3. To establish, abolish, and change election precincts, and to appoint judges of election, canvass all election returns, declare the result, and issue certificates thereof;

4. To lay out, maintain, control, and manage public highways, ferries and bridges, within the county, and levy such tax therefor as required by law; provided, however, that they may, in the exercise of a sound discretion, jointly with other counties, lay out, maintain, control, manage,

and improve public highways, ferries, and bridges in adjacent counties, wholly or in such part, as may be agreed upon between the boards of county commissioners of the counties concerned, and levy taxes therefor as provided by law;

5. To provide for the care and maintenance of the indigent sick, or the otherwise dependent poor of the county; erect and maintain hospitals therefor, or otherwise provide for the same; and to levy the necessary tax therefor, per capita, not exceeding two dollars (\$2) and a tax on property not exceeding three-fifths ($\frac{3}{5}$) of one per cent, (1%) or either of such levies when both are not required, and to expend not to exceed five per cent (5%) of any such levy for the collection of said tax, or of any part thereof;

6. To provide a farm for the support of the poor of the county, and make regulations for working the same;

7. When there are no necessary county buildings, to provide suitable rooms for county purposes;

8. To purchase, receive by donation, or lease any real or personal property necessary for the use of the county, preserve, take care of, manage, and control the same; but no purchase of real property must be made unless the value of the same has been previously estimated by three (3) disinterested citizens of the county appointed by the district judge for that purpose, and no more than the appraised value must be paid therefor;

9. To cause to be erected and furnished a courthouse, jail, hospital, and such other public buildings as may be necessary;

10. To sell at public auction at the courthouse door, after thirty (30) days' previous notice given by publication in a newspaper published in the county, said notice to be published once a week for four (4) successive weeks, and posted in five (5) public places in the county, and convey to the highest bidder for cash, or on such terms as the board of county commissioners may approve, any property, real or personal, not necessary in the conduct of the county business, belonging to the county; but no such sale of real property must be made unless the value of the same has been appraised by three (3) disinterested citizens of the county appointed by the district judge for that purpose, within three (3) months prior to the date of said sale and no such sale for cash or on terms shall be made for less than the appraised value of said property; provided, that in case such sale is made on terms other than for cash, no such sale of county property shall be made except at least one-eighth ($\frac{1}{8}$) of the purchase price so bid therefor be paid in cash at the date of sale; and provided further, that no deferred payment or payments shall extend for a period of more than eight (8) years, and that all such deferred payments shall bear interest at the rate of six per cent (6%) per annum, payable annually; and provided further, that no title to the said property so sold shall pass from the county to such purchaser or his assigns until the full amount of such purchase price has been paid therefor and the proceeds thereof paid into the county treasury for the use of the county. The said appraisers shall be compensated at the rate of eight dollars (\$8) per day for each day necessarily expended in making such appraisal;

11. At the regular meetings of the board, to examine and allow the accounts of all officers having the care, management, collection or disbursement of moneys belonging to the county, or appropriated by law or otherwise for its use and benefit;

12. At the regular meetings of the board to examine, settle, and allow all accounts legally chargeable against the county except salaries of officers, and order warrants to be drawn on the county treasurer therefor, and provide for the issuing of the same;

13. To levy such tax annually on the taxable property of the county for county purposes as may be necessary to defray the current expenses therefor, including salaries otherwise unprovided for, not exceeding sixteen (16) mills on each dollar of the assessed valuation for any one (1) year; and to levy such taxes as are required to be levied by special or local statutes;

14. To equalize the assessments;

15. To direct and control the prosecution and defense of all suits to which the county is a party;

16. To insure the county buildings in the name of and for the benefit of the county;

17. To grant licenses for keeping ferries, and such other licenses as are provided by law;

18. To fix the compensation of all county officers not otherwise in this code or by general or special law fixed, and provide for the payment of the same;

19. To fill by appointment all vacancies that may occur in county, township, or precinct offices, except in the office of county commissioner;

20. To contract for the county printing, and provide books and stationery for county officers;

21. At the adjournment of each session of the board to cause to be published in a newspaper, a complete list of all claims ordered paid for all purposes showing name, purpose and amount and a fair summary of the minutes and records of all of its proceedings, and also to be published annually in a newspaper the county clerk's annual statement of the financial condition of the county; and provided that publication of such minutes and record of proceedings must be made within twenty-one (21) days after the adjournment of the session, and publication of the financial statement must be made within thirty (30) days after the presentation of the same to the board of county commissioners, and the board of county commissoiners shall not allow or order paid any claim for any such publication of minutes and record of proceedings or annual financial statement unless made within the time herein prescribed therefor;

22. To represent the county, and have the care of the county property, and the management of the business and concerns of the county in all cases where no other provision is made by law;

23. To make and enforce such rules for its government, the preservation of order, and the transaction of business, as may be necessary;

24. To adopt a seal for the board, a description and impression whereof must be filed by the clerk in the offices of the county clerk and secretary of state;

25. To perform all other acts and things required by law not in this title enumerated, or which may be necessary to the full discharge of the duties of the chief executive authority of the county government;

26. To borrow money upon the credit of the county to meet current expenses, if the county revenue is insufficient;

27. To issue on the credit of the county coupon bonds to an amount sufficient to secure the necessary funds for the procurement of necessary building sites, for the construction of necessary public buildings, and for the construction of bridges and highways, in accordance with the provisions of articles III and IV, chapter II, title II, part IV of the Political Code.

Amd. Sec. 1, Ch. 95, L. 1923; Amd. Sec. 1, Ch. 54, L. 1927.

A county is merely a subdivision of the state for governmental purposes, and as such is subject to legislative regulation and control; the legislature may within the limitations prescribed by the constitution, circumscribe or extend the powers to be exercised by a county, and legislative authority to regulate or control the disposition of county property not having been limited by the constitution, it could properly declare, as it did by this section and section 4444, that such property may be sold only under the restrictions and in the manner therein indicated. *Franzke v. Fergus County et al.*, 76 Mont. 150, 245 Pac. 962.

The contention that subdivision 10 of this section, providing the method to be pursued in selling county property, applies only to a sale of property obtained for purely public purposes but no longer needed for such purposes, and that therefore a ranch held by it in its proprietary capacity and not acquired for a public

purpose does not fall within its purview, cannot be sustained. *Franzke v. Fergus County et al.*, 76 Mont. 150, 245 Pac. 962.

A county is without power to enter into an agreement to sell land owned by it, on the installment plan, its power in that regard being limited to an actual sale at public auction and for cash by this section. *Franzke v. Fergus County et al.*, 76 Mont. 150, 245 Pac. 962.

Cited in *Riggs v. Webb*, 77 Mont. 80, 82, 249 Pac. 1041; *State v. McGraw*, 74 Mont. 152, 155, 240 Pac. 812; *State ex rel. Case v. Bolles et al.*, 74 Mont. 54, 65, 238 Pac. 586; *In re Claims of Hyde*, 73 Mont. 363, 368, 236 Pac. 248; *State ex rel. Lockwood v. Tyler*, 64 Mont. 124, 135, 208 Pac. 1081.

Cited as section 2894, Revised Codes, as amended in *State v. District Court*, 62 Mont. 275, 278, 204 Pac. 600.

Cited as section 2894, Revised Codes, in *State v. Poland et al.*, 61 Mont. 600, 603, 203 Pac. 352.

4465.1. Grant of right of way for pipe line construction—Damages.

That the board of county commissioners of any county of the state of Montana shall have the power and authority to grant to any person, association or corporation the right to construct and maintain in, along and under any public road or highway within such county, any pipe line for the conveyance of natural or artificial gas, water or any other substance, for the use of any county, city or town, or the inhabitants thereof; provided, that, when constructed, such pipe line shall not now or in the future interfere with the surface use of such road or highway; and provided further, that the person, association or corporation owning or constructing such pipe line shall compensate such county for any and all damages done to any such road or highway in the laying, construction or maintenance of such pipe line, and shall promptly restore any such road or highway to its former condition of usefulness, without interference with the traffic thereon.

En. Sec. 1, Ch. 75, L. 1927.

4465.2. Proviso. Nothing in this act contained shall be construed as in any manner affecting any of the terms and provisions of chapter

14 of part IV of the Code of Civil Procedure as set forth in the Revised Codes of 1921.

En. Sec. 2, Ch. 75, L. 1927.

CHAPTER 11.

SPECIAL POWERS AND DUTIES OF COUNTY COMMISSIONERS.

4470A and 4470B. Relating to appropriations for county advertising.

Rep. Sec. 3, Ch. 107, L. 1927.

4470.1. Appropriation for county advertising authorized. The board of county commissioners of any county in the state is hereby authorized to make an appropriation of money from the general fund of the county for the purpose of advertising the agricultural, commercial, mining, manufacturing, labor or other resources of the county, through the exposition exhibits committee of the state department of agriculture, labor and industry, or for the purpose of assisting the said department of agriculture in presenting exhibits of Montana products at fairs or expositions outside the state of Montana.

En. Sec. 1, Ch. 107, L. 1927.

4470.2. Amount of appropriation. Said appropriation shall not exceed in any one year the following amounts, to wit: in counties of the first class or second class, one thousand dollars (\$1,000); in counties of the third class, five hundred dollars (\$500); in all other counties two hundred fifty dollars (\$250). Said money shall be expended in such manner as the board of county commissioners may direct or may be transmitted to the department of agriculture, when such appropriation is for the purpose of assisting said department in advertising the resources or presenting the exhibits hereinabove indicated.

En. Sec. 2, Ch. 107, L. 1927.

4482. Contracts for county printing—Duty of county commissioners to enter into.

By the requirement of this section county commissioners must contract with a newspaper of general circulation "published" within the county and which has been published therein at least one year, to perform the county printing, a paper is contemplated the work of composing, printing, issuing and distributing of which is done in the county, and not one the composition and printing of which is done in another county and sent to the county in which it maintains an office for distribution. State ex rel. Vickers v. Board of County Commrs., 77 Mont. 316, 250 Pac. 606.

This section does not prohibit the use of "patent insides" used in small country newspapers, they not affecting the status of a paper so long as it otherwise meets the necessary requirements of a newspaper of general circulation. State ex rel.

Vickers v. Board of County Commrs., 77 Mont. 316, 250 Pac. 606.

The fact that a weekly newspaper secured a government permit for entry in the postoffice as second-class matter at the county seat of the county in which it was distributed, though published in an adjoining county, is of no consequence in determining whether it was "published" in the former to qualify it as a bidder for county printing under this section. State ex rel. Vickers v. Board of County Commrs., 77 Mont. 316, 250 Pac. 606.

Where an eight-page newspaper for some four months of the year necessary to qualify it for bidding on county printing was published in another county, a "supplement" consisting of one sheet printed on one side, issued by the publisher in the former county during the four months, for which, however, no per-

mit for entry in the postoffice had ever been obtained, which was included in and designated a part of the regular issue, and the name of which was subsequently changed to that of the regular paper, was not the newspaper contemplated by this section 4482, and therefore not entitled under the name of the regular paper to bid on county printing. *State ex rel. Vickers v. Board of County Commrs.*, 77 Mont. 316, 250 Pac. 606.

This section is not open to the objection that in making it compulsory upon the board of county commissioners to let the county printing to a newspaper in existence for a year or more even though its bid be higher than that of one not published for that length of time, it indirectly contravenes the provision of section 4, article XII, of the state constitution, prohibiting the levying of taxes upon the inhabitants or property in any county for municipal purposes, since a county is but a subdivision of the state for governmental purposes and as such subject to legislative control, and the state has power, as sovereign proprietor, to provide from whom and upon what terms it will purchase the supplies needed in the discharge of its governmental functions. *State ex rel. Woare v. Board of Commrs.*, 70 Mont. 252, 225 Pac. 389.

On the authority of *Hersey v. Neilson*, 47 Mont. 132, and *Stange v. Esval*, 67 Mont. 301, held that this section requiring the contract for county printing to be let to a newspaper published in the particular county continuously for a period

of one year immediately preceding its letting, is not void as in violation of the fifth and fourteenth amendments to the federal constitution, as depriving the county of the right to contract and granting a person a privilege or immunity not granted to another, or of section 26, article V of the state constitution, prohibiting the enactment of special or class legislation, or of sections 3 and 27, article III thereof, as denying the county the right to contract and depriving it of property without due process of law. *State ex rel. Woare v. Board of Commrs.*, 70 Mont. 252, 225 Pac. 389.

This section provides that the county commissioners shall contract for the county printing with some newspaper which has been published continuously within the county for at least one year immediately preceding the awarding of the contract. Two papers submitted bids, one of which had been established in the county about seven months, while the other had been published therein for several years. The contract was awarded to the former. Held, in a taxpayer's suit that the district court improperly denied an injunction to prevent the carrying out of the contract, it having been the duty of the county commissioners under this section, to award the contract to the paper which met the requirement of publication within the county for at least one year preceding the awarding of the contract. *Strange v. Esval et al.*, 67 Mont. 301, 215 Pac. 807.

4501. Destruction of insect pests by county commissioners.

Sections 4501, 4503 and 4504 were cited in *State ex rel. Case v. Bolles et al.*, 74 Mont. 54, 69, 238 Pac. 586.

4502. Pay of workers—Affidavit—Claims. Any person so appointed under the provisions of this act shall receive as compensation the sum of not less than two dollars and fifty cents (\$2.50), or more than four dollars (\$4) per day for eight hours' labor performed in poisoning, killing, catching and exterminating such insect pests exclusive of time going to and returning from such work. Such person shall make a sworn statement to the county of the time put in and the poison or other means used, which said statement shall be attached to the bill or claim against the county, and warrants in payment thereof drawn on the general fund.

Amd. Sec. 1, Ch. 25, L. 1923.

4503. Purchase and payment for equipment. The board of county commissioners of any county may, from time to time, purchase such quantities and amounts of poisons, traps and other equipment necessary to carry out the provisions of this act to poison, kill, catch or exterminate such insect pests, and warrants in payment thereof shall be drawn on the general fund.

Amd. Sec. 2, Ch. 25, L. 1923.

4504. Tax levy—Registry warrants. The board of county commissioners shall annually determine the amount of such warrants drawn on the general fund for the purposes of this act, and the succeeding year shall levy a tax for the purpose of insect pest extermination sufficient in amount to reimburse said general fund for the money so paid out on such warrants, which said tax shall be leved upon all the property in the county and shall not exceed one mill on each dollar of assessed valuation. If there be no money in the general fund with which to pay such warrants, they shall be registered and bear interest in the same manner as other county warrants, but in such case the interest shall be computed and added to the amount for which such tax is levied.

Amd. Sec. 3, Ch. 25, L. 1923.

4508. Seed commissioner—Employment. The board of county commissioners of each county and the city council of each municipal corporation are hereby authorized and upon presentation to them of a petition signed by fifty (50) freeholders of the county or twenty-five (25) freeholders of the municipal corporation, as the case may be, may employ a suitable and competent person as weed commissioner for the period between the fifteenth day of June and the first day of October of each year and to provide for his compensation at not to exceed the sum paid to road supervisors or street commissioners, and it shall be the duty of said weed commissioner when appointed to supervise the destruction of noxious weeds and he is hereby empowered to give notices provided for in this act, and cause the provisions hereof to be forced [enforced].

Amd. Sec. 1, Ch. 60, L. 1923.

4509. Inspection and notice to owner. Where the weed commissioner has knowledge, or on written complaint made to any such weed commissioner, that noxious weeds described in this act are growing or standing upon the lands within his jurisdiction, in violation of the law, he shall forthwith inspect the premises and if the complaint be well founded, he shall cause written notice to be served on the person permitting the same, directing him to comply with the provisions of this act, in respect thereto within four (4) days after such service.

Amd. Sec. 2, Ch. 60, L. 1923.

4510. Service of notice. All notices herein provided for may be served by any citizen of the county or municipal corporation in which the land is situated; such service shall be upon the occupant, if any there be, otherwise upon the owner or person in charge of the land and shall be by registered letter or person. If there be no person within the county upon whom service can be made, of which the affidavits of the person serving the notice shall be prima facie evidence, the subsequent procedure shall be the same as though service had been had and the notice ignored.

Amd. Sec. 3, Ch. 60, L. 1923.

4511. Procedure to enforce notice—Tax levy—Suit. If the notice be not obeyed within four (4) days, the weed commissioner of the county or municipal corporation, as the case may be, shall forthwith destroy

such weeds and make report thereof to the county clerk or to the city clerk in cities where taxes are collected by the city treasurer, with a verified, itemized account of his services and expenses in so doing, and a description of the lands involved, and shall include in said account his own wages for the time of his necessary employment as well as for men and teams employed, at a rate paid for farm labor per day for man and team for eight hour day. Such expense shall be paid by the county or municipal corporation out of the general funds and unless the sum be repaid by the owner or occupant before October 15th next ensuing, the county clerk, or the city clerk, as the case may be, shall certify the amount thereof, with the description of the premises to be charged, and shall extend the same to the assessment list of the said county or city as a special tax on said land, but if the land for any reason be exempt from general taxation, the amount of such charge may be recovered of the owner in a civil action with costs.

Amd. Sec. 4, Ch. 60, L. 1923.

4512. Weeds in crops—Procedure. When noxious weeds are so intermixed with a growing crop that the field is a menace to the community, the weed commissioner shall have power to order the destruction of the same or such parts thereof as may be necessary. All officials charged with the enforcement of this act may go upon the lands infested with noxious weeds, or suspected thereof, for any purpose necessary to such enforcement.

Amd. Sec. 5, Ch. 60, L. 1923.

4520. Liability on official bond of commissioner.

Section 1627 places the specific legal duty upon the board of county commissioners to remove obstructions in a highway, and after notice thereof any member of the board who neglects to do so becomes personally liable under this section for any injury caused thereby, and they are not relieved of liability by merely instructing the road supervisor to

erect and maintain barriers; hence an allegation in the complaint of one who has been injured, to the effect that the board had not instructed the supervisor to erect and maintain barriers, is not required to render the pleading sufficient. *Becker v. Chapple et al.*, 72 Mont. 199, 232 Pac. 538.

CHAPTER 11A.

SPECIAL POWERS COUNTY COMMISSIONERS—ROUNDUP OF ABANDONED HORSES.

4520.1. Definition of terms. The term "abandoned horse" as used in this act means any horse, mare, gelding, filly, jack, mule or any other animal of the genus equus, of the age of one (1) year or over, and unbranded, or if branded, which escaped assessment for taxation for the year next preceding its impounding as hereinafter provided for, and running at large upon the open range of this state, and including foals running with dams coming within the above definition. An animal not bearing a decipherable brand which is recorded in the office of the recorder of marks and brands shall be deemed unbranded.

The term "open range" means all lands in the state of Montana not inclosed by a fence. The term "open range" includes all highways

outside of private inclosures and used by the public, whether the same have been formally dedicated to the public or not.

The term “person” shall include individuals, associations or persons and corporations.

En. Sec. 1, Ch. 140, L. 1925; Amd. Sec. 1, Ch. 29, L. 1927.

4520.2. Abandoned horses declared nuisances. It shall be unlawful for any person to suffer or permit any abandoned horse to run at large upon the open range in the state of Montana; and such horses so running at large upon the open range in the state are hereby declared to be a public nuisance and a public menace, and are hereby condemned, subject to the right of the owner of any such abandoned horse to reclaim the same as and under the conditions hereinafter provided.

En. Sec. 2, Ch. 140, L. 1925; Amd. Sec. 2, Ch. 29, L. 1927.

4520.3. Roundups authorized—Procedure. For the purpose of speedily clearing abandoned horses from the open range in any county or in any district thereof, the board of county commissioners of any such county must, upon the petition of at least five (5) responsible property owners, inhabitants of the proposed roundup district, engaged in the livestock business and paying taxes upon livestock in such county, or upon the petition of a reputable local livestock association, authorize a roundup of abandoned horses in any district within such county, any such roundup to be conducted in such manner as to cause as little disturbance as reasonably possible to horses running lawfully on the open range. All expense of any such roundup shall be paid by the petitioners at whose request the same is initiated, and no county officer or board shall have any power to expend any moneys of the county or incur any obligation on its behalf in connection with any such roundup. Such petitioners, however, shall be reimbursed for the expense of such roundup, as and when moneys may be available for that purpose, in the abandoned horse fund, by warrants issued upon claims filed as in the case of other claims against the county. Upon the filing of such petition the board shall make an order authorizing such roundup, which order shall describe generally such district with reasonable certainty; provided, that said district shall not include more nor less territory than that described in the petition; and such order shall also specify the date on or within ten (10) days after which the roundup shall begin and shall designate the place within the district, at which the headquarters of such roundup shall be maintained.

En. Sec. 3, Ch. 140, L. 1925; Amd. Sec. 3, Ch. 29, L. 1927.

4520.4. Notice of roundup—How given. Notice of the holding of any such roundup shall be given by the board of county commissioners at least thirty (30) days prior to the date when the same shall begin, such notices to be published at least once a week for three (3) successive weeks in some newspaper of general circulation, printed and published in the county in which such roundup is to be held (if any such newspaper be printed and published within such county) and such notice shall be posted in at least five (5) public places, outside of the county seat of

such county on public highways in such county or district, as the case may be, in which such roundup is to be held, and three (3) notices shall be posted in three (3) public places in such county seat, one of which notices shall be posted at the front door of the courthouse, such notices as posted outside of the county seat to be posted not less than two (2) miles apart and all posted notices to be posted at least twenty (20) days before the date upon or after which the roundup shall begin as stated in such notice. If no newspaper be printed and published in such county, publication in a newspaper shall not be required. At least twenty (20) days before the date upon or after which the roundup is ordered to begin, a copy of such notice shall be, by the clerk of said board of county commissioners, filed with the Montana livestock commission. Such notices shall be in substantially the following form:

"Notice is hereby given that in accordance with the provisions of chapter of the laws of the twentieth session of the legislative assembly of the state of Montana, and beginning on or within ten (10) days after the day of, 19...., a roundup of abandoned horses will be held under the supervision of the undersigned board of county commissioners in the county of, state of Montana (or if only in a district, generally describing the district), and all abandoned horses taken up in such roundup, and not lawfully reclaimed by the owner, will be sold or otherwise disposed of as provided in said chapter. The headquarters of such roundup will be maintained at

Dated the day of, 19....

By order of the board of county commissioners of county.

By

Clerk of said board."

En. Sec. 4, Ch. 140, L. 1925; Amd. Sec. 4, Ch. 29, L. 1927.

4520.5. Supervision of roundups—Bond of foreman. All roundups shall be under the control and supervision of the board of county commissioners of the county in which the same shall be held. Roundup districts shall be numbered in the order of their creation. Each roundup shall be conducted by some person designated by the board of county commissioners, whose official designation shall be "Roundup Foreman, Roundup District, County, State of Montana," and such person shall maintain his headquarters at the place designated by the board of county commissioners in its order as the headquarters of such roundup. Such roundup foreman shall have power to administer oaths and affirmations in all matters coming within the scope of his official duties. The board of county commissioners shall require from such roundup foreman an official bond, in an amount not less than two thousand five hundred dollars (\$2,500) and not to exceed five thousand dollars (\$5,000), which bond shall be conditioned as official bonds of county officers, and shall be subject to all provisions of law applicable to such bonds. All abandoned horses taken up in any such roundup shall be delivered to the roundup foreman in charge of such roundup and shall be by him offered for sale at public auction and sold to the highest bidder for cash, if there be any bidder or bidders therefor, and

any such abandoned horses so offered for sale, and for which no bid is made, shall be destroyed or otherwise disposed of in the discretion of the board of county commissioners, unless reclaimed as herein provided.

En. Sec. 5, Ch. 140, L. 1925; Amd. Sec. 5, Ch. 29, L. 1927.

4520.6. Owner may claim horses. Any person claiming to be the owner of any such abandoned horse or horses may serve written notice upon the roundup foreman in charge of such roundup of his claim of ownership, at any time before sale, or other final disposition of such horse or horses, such claim of ownership to be verified by the oath of the claimant or someone on his behalf, and the sale or other final disposition of such horse or horses shall, as to such horse or horses, be postponed from time to time as may be necessary, to enable the claimant to make proof of his claim as herein provided; provided that such postponement shall not be had unless the claimant shall pay to the roundup foreman in charge of such roundup, or deliver to him satisfactory security for, the estimated cost of keeping and feeding such horse or horses until sale or other final disposition, or delivery to the owner.

En. Sec. 6, Ch. 140, L. 1925; Amd. Sec. 6, Ch. 29, L. 1927.

4520.7. Proof of ownership—Fees. Any person claiming any abandoned horse or horses as provided in section 6 of this act shall, within five (5) days after serving the notice provided for in said section 6, or within such further time as the board of county commissioners shall allow, upon good cause shown, submit to such board proof of his ownership, and shall deposit with said board the amount of any unpaid taxes and penalties which may be assessed against such horse or horses, together with the sum of five dollars (\$5) roundup fee. The board shall decide in all cases in preference to all other matters coming before it and at the earliest possible moment. If the claim shall be allowed, the roundup foreman in charge of such roundup shall immediately be notified of such decision and he shall forthwith deliver such horse or horses, as to which ownership shall be so proved, to the owner upon payment of any amount due from such owner for the estimated cost of keeping and feeding such horse or horses as aforesaid, and the deposit made by such owner of taxes, penalties, and roundup fee, shall be by the board delivered to the county treasurer; but if such board shall deny the claim of ownership it shall forthwith notify the person in charge of such roundup of its decision, and such horse or horses as to which such claim shall be denied shall be offered for sale at the earliest convenient session of the sales being held under such roundup, and if not sold the same shall be destroyed or otherwise disposed of as though no claim had been presented.

En. Sec. 7, Ch. 140, L. 1925; Amd. Sec. 7, Ch. 29, L. 1927.

4520.8. Notice and time of sale—Title of purchaser. Before any sale shall be had, at least ten (10) days' notice shall be given by publication and posting in the manner specified in section 4 hereof, except that publication, if made in a newspaper, shall be once in each week for two successive weeks, and posting shall be done at least five (5) days before the date of sale. Such notice shall be in substantially the following form:

"NOTICE OF SALE OF ABANDONED HORSES.

Notice is hereby given that on day, the day of, 19...., at in the county of, State of Montana, beginning at the hour of M., on said day the following described abandoned horses will be sold at public auction to the highest bidder for cash, to wit:

(Give general description of horses to be sold by brand, if any, color, approximate weight, and estimated age.)

Any horses not reclaimed before sale as provided by law, and for which no bid is made at said sale, will be destroyed, or otherwise disposed of, in the discretion of the board of county commissioners of county, state of Montana.

Dated the day of, 19....

By order of the Board of County Commissioners of County, Montana.

By,
Clerk of said board."

All such sales shall be held between the hours of eight (8) o'clock in the forenoon and six (6) o'clock in the afternoon and may be continued from time to time until all abandoned horses taken in such roundup shall have been disposed of. On payment of the price bid for any such horse or horses sold, the delivery thereof, with a bill of sale, vests the title thereto in the purchaser.

En. Sec. 8, Ch. 140, L. 1925; Amd. Sec. 8, Ch. 29, L. 1927.

4520.9. Assessment of horses. It shall be the duty of the county assessor immediately to assess all horses taken up in such roundup which shall be sold, or reclaimed before sale, and not already assessed for the current year, and forthwith transmit to the county treasurer a copy of each assessment made. Any such horses which have escaped the assessment mentioned in section 1 foregoing, shall be assessed as provided for in section 2033 of the revised Codes of Montana of 1921.

En. Sec. 9, Ch. 140, L. 1925; Amd. Sec. 9, Ch. 29, L. 1927.

4520.10. Disposal of moneys. All moneys paid by reclaiming owners of any such horse or horses shall be paid to the county treasurer and by him kept in a fund to be designated as the "Abandoned Horse Fund, Roundup District No. (giving number of district in which such horse or horses were rounded up)." A separate fund, styled as above specified, shall be kept by the county treasurer for each roundup district created in his county. All moneys received from the sale of any such horses shall be paid to the county treasurer and if such sum received from the sale of any such horse shall not exceed the taxes, penalties, and the roundup fee, the whole thereof shall be immediately deposited in the abandoned horse fund for the district in which such horse or horses were rounded up; but if the sum received from the sale of any such horse shall exceed such taxes, penalties and roundup fee, the amount of such taxes, penalties and roundup fee shall be forthwith deposited in the abandoned horse fund for such district, and the excess shall be kept by

the treasurer in a separate fund, and he shall make a record of the description of such horse, the amount received for the same, and the amount of deductions for taxes, penalties and roundup fee, which record shall be open to public inspection; and any person making claim to the board of county commissioners at any time within six (6) months from the date of sale, of ownership of such horse, and submitting proof of ownership to such board with such claim, to the satisfaction of such board, shall be entitled to receive such excess received from the sale of such horse. Any money received from the sale of any such horse in excess of taxes, penalties, and roundup fee, which shall not be so claimed within six (6) months after such sale, shall at the expiration of said period become the property of such county and shall be transferred to the abandoned horse fund for the district in which any such horse was rounded up.

En. Sec. 10, Ch. 140, L. 1925; Amd. Sec. 10, Ch. 29, L. 1927.

4520.11. Record of foreman—Filing. The roundup foreman in charge of any such roundup shall keep an accurate record of all proceedings had under the order for such roundup and within thirty (30) days after such roundup shall be completed he must prepare, in triplicate, and verify by his oath, a full, true and accurate report of all the proceedings taken or had under the order for the roundup, among other things, particularly including a complete financial statement, the number and description of horses impounded and how disposed of. Within said thirty (30) days one of such triplicates of such report shall be filed with the clerk of the board of county commissioners and such filing shall be notice to the world of all the contents of such report and prima facie proof of the facts herein stated. Within said thirty (30) days one of such triplicate shall also be filed with the county assessor and one with the county treasurer for their information and appropriate action.

En. Sec. 11, Ch. 140, L. 1925; Amd. Sec. 11, Ch. 29, L. 1927.

4520.12. Disposal abandoned horse fund. On the thirtieth day of November of each year the county treasurer shall, if all claims against any such abandoned horse fund are paid and a balance remains in such fund, transfer all moneys so remaining in such fund to the general fund of the county, subject to the usual division with the state as to any portion of such balance which shall consist of taxes collected on the abandoned horses; but no part of the roundup fee of five dollars (\$5) shall be paid to the state; and any portion of the taxes so collected which shall be used in paying claims against said fund is hereby declared to be a part of the cost of collection of such taxes.

En. Sec. 12, Ch. 140, L. 1925; Amd. Sec. 12, Ch. 29, L. 1927.

4520.13. Liability of officers. No officer, board, or employee of any county, nor any employee of any such officer of [or] board shall be liable for any act performed in good faith in discharging official duties under this act; and all such acts shall be presumed to have been in good faith and in conformity with this act.

En. Sec. 13, Ch. 140, L. 1925; Amd. Sec. 13, Ch. 29, L. 1927.

4520.14. Certain roundups by individuals prohibited. It shall be unlawful for any person or persons to roundup from the range any horse or horses in any roundup district, after such districts have been designated by the county commissioners, until after such roundup; provided, however, that an owner of horses on which the taxes have been paid in this district may gather the same by notifying the roundup foreman, and being accompanied by such foreman or a representative of such foreman in gathering such horses.

En. Sec. 14, Ch. 29, L. 1927.

4520.15. Limitation act. Except as herein provided, nothing herein contained shall be construed as limiting the powers or duties of assessors, county treasurers, or other boards of officers.

En. Sec. 14, Ch. 140, L. 1925; Amd. Sec. 15, Ch. 29, L. 1927.

4520.16. Effect partial invalidity act. If any clause, sentence, section, paragraph or part of this act shall for any reason be adjudged by any court of competent jurisdiction to be invalid or inoperative, such judgment shall not affect, impair or invalidate the remainder of this act but shall be confined in its operation to the clause, sentence, section, paragraph or part hereof directly adjudged to be invalid or inoperative.

En. Sec. 15, Ch. 140, L. 1925; Amd. Sec. 16, Ch. 29, L. 1927.

CHAPTER 12.

CARE OF THE COUNTY POOR—OLD AGE PENSIONS.

4527. Contract for medicines and medical attendance. The board must annually, at their December meeting, make a contract with some resident practicing physician to furnish medical attendance to the sick, poor, and infirm of the county, and to the inmates of the county jail; and must also make provision for the furnishing of medicine to the same; provided, however, that the board may let such contract for the furnishing of medical attendance to the physician appointed by such board as county health officer, and may fix a salary or other rate of compensation to be paid to such county health officer for the furnishing of such medical attendance, which salary or other compensation shall be in addition to the salary of such physician as county health officer. Said board may also, when in its judgment the interests of the county require, appoint a deputy county health officer who need not be a resident of the county but who shall be located at a point where he can serve people living in a portion of said county adjacent to his point of residence. The boards of county commissioners of two or more adjacent counties may also, when in their opinion the needs of the county poor living at a distance from the residence of the county health officer, will be better served by such an arrangement, unite in employing a special deputy county health officer whose duty it shall be to attend to the needs of the county poor in any designated part of said adjacent counties.

The county commissioners of the several counties uniting in such an arrangement shall fix the compensation of such special deputy and

such several counties shall bear the cost of same on some equitable division.

Amd. Sec. 1, Ch. 55, L. 1927.

4541.1. Creation old age pension commission. There shall be established in each county of the state of Montana a county old age pension board hereinafter called the old age pension commission, and the boards of county commissioners of the respective counties of the state of Montana are hereby designated as the old age pension commissions of their respective counties and to serve as such without any additional compensation.

En. Sec. 1, Ch. 72, L. 1923.

Constitutionality of old age pension or assistance acts, note, 37 A. L. R. 1524.

4541.2. Duties and meetings. The old age pension commission shall perform all the duties imposed upon it by this act and shall have authority to make such rules and regulations consistent with the provisions hereof as are necessary to carry out the provisions of this act. The old age pension commission shall meet at such times and places as shall be fixed by its rules.

En. Sec. 2, Ch. 72, L. 1923.

4541.3. Who entitled to pension. Every person (man or woman, married or single) shall, in the discretion of the old age pension commission while residing in the state of Montana, be entitled to a pension in old age subject to the restrictions and qualifications hereinafter noted.

En. Sec. 3, Ch. 72, L. 1923.

4541.4. Amount of pension. The amount of said pension shall be fixed by the old age pension commission with due regard to the conditions in each case; but in no case shall it exceed twenty-five dollars (\$25) per month.

En. Sec. 4, Ch. 72, L. 1923.

4541.5. Necessary qualifications of applicants. An old age pension may be granted only to an applicant who,

(a) Has attained the age of seventy years or upwards.

(b) Has been a citizen of the United States for at least fifteen (15) years before making application for a pension.

(c) Resides in the state of Montana and has so resided continuously therein for not less than fifteen (15) years immediately preceding the date of the application for a pension, provided, that continuous residence in the state shall not be deemed to have been interrupted by occasional absence therefrom where the total period of such absence does not exceed three years; or by absence from the state while in the employ or service of the state or of the United States. And provided further that a person who has resided in the state of Montana twenty-five (25) years at least five (5) of which have been immediately preceding the date of the application shall be deemed qualified in respect to residence.

(d) That during the period of ten years preceding such date of

application he has not been imprisoned for any offense punishable by imprisonment in the state penitentiary.

(e) That the claimant, if a husband, has not during the period of fifteen years immediately preceding such date of application for a pension, for a period of six months or upwards, deserted his wife or without just cause failed to provide for her with adequate means of maintenance or neglected to maintain and provide for such of his children as were under the age of fifteen years; or if a wife, deserted her husband or such of her children as were under age without cause.

(f) That he has not been, within one year preceding such application for pension, a professional tramp or begger.

En. Sec. 5, Ch. 72, L. 1923.

4541.6. Other limitations—Refund on death of pensioner. The income of the claimant from all sources at the date of application for relief shall not exceed three hundred dollars (\$300) per annum.

(a) The claimant must not have deprived himself or herself, directly or indirectly, of any property for the purpose of qualifying for old age relief.

(b) The aged person must have no child or any other person responsible legally for the support of the aged person under the laws of the state of Montana fully able to support the applicant.

(c) At the death of the person to whom the pension is granted, or of the last survivor of a married couple, the total amount of the pension since the first grant, together with five (5) per centum of interest shall be deducted and allowed by the proper courts out of the proceeds of his or her property as a preferred claim against the estate of the person so assisted, and refunded to the county treasury to the credit of the poor fund, leaving the balance for distribution among the lawful heirs in accordance with law; provided that the old age pension commission may demand the assignment or transfer of such property upon the first grant of such pension. The old age pension commission shall establish such rules and regulations regarding the care, transfer, management, and sale of such property as it deems advisable, and also provide for the return of the balance of the claimant's property into its hands whenever the pension is withdrawn or the claimant ceases to request it.

En. Sec. 6, Ch. 72, L. 1923.

4541.7. Annual income, how computed. The annual income of any property inclusive of a homestead, shall be computed at five (5) per centum of its determined value.

(a) In ascertaining a claimant's income and the amount of pension, his income for the last preceding year shall be deemed his annual income, and the property owned at the end of that year as his accumulated property, provided that when the claimant shows to the satisfaction of the old age pension commission the loss of personal income derived from personal earnings, it shall be deducted from the income of the preceding year in considering the amount of pension to be granted.

En. Sec. 7, Ch. 72, L. 1923.

4541.8. Claims, how made. A claimant for an old age pension under this act shall deliver his or her claim in writing to the old age pension commission of the county in which the claimant resides in the manner and form prescribed by the old age pension commission. All statements in the application shall be sworn to or affirmed by the applicant setting forth that all facts are true and correct in every material point.

En. Sec. 8, Ch. 72, L. 1923.

4541.9. Certificates and renewal. When the claim is established and the rate of the first year's old age pension is fixed, the old age pension commission shall in the manner it may prescribe certify the same to the county treasurer of such county and shall issue to the claimant an old age pension certificate which shall state the date of issuance, the claimant's name, age, residence and the amount of monthly payment which certificate shall be good for one year unless sooner revoked.

(a) The old age pension certificate shall be required each subsequent year, to be renewed after satisfactory investigation.

En. Sec. 9, Ch. 72, L. 1923.

4541.10. Commencement and payment. The old age pension shall commence on the date named in the certificate issued to the claimant by the county treasurer.

(a) All old age pensions shall be paid in monthly payments by county warrants drawn on the county treasurer and on the poor fund thereof.

En. Sec. 10, Ch. 72, L. 1923.

4541.11. Cancellation of pension. If at any time during the currency or continuance of an old age certificate, the recipient or the wife or husband of the recipient becomes possessed of any property or income in excess of the amount allowed by law in respect to the amount of pension granted, the old age pension commission may, on inquiry, either cancel the pension or vary the amount thereof during the period of the certificate, and it shall be the duty of the recipient immediately to notify the old age pension commission of the receipt and possession of such property or income.

(a) If on the death of any recipient of an old age pension, it is found that he, or she, was possessed of property in excess of the amount allowed by law in respect to the amount of pension granted, double the total amount of the relief granted in excess of that to which the recipient was by law entitled, may be recovered by the old age pension commission as preferred claim from the estate so found in excess. The attorney general or county attorney shall take the necessary proceedings to recover such claim and the amount recovered shall be paid into the county treasury of such county.

En. Sec. 11, Ch. 72, L. 1923.

4541.12. Funeral expenses—Payment. On the death of a recipient of old age pension, the installment then accruing and such other reasonable funeral expenses as are necessary for the burial of such person shall be paid to such persons as the old age pension commission directs; pro-

vided that these expenses do not exceed one hundred dollars (\$100) and provided further that the estate of the deceased is insufficient to defray the expenses.

(a) It is provided, further, that these provisions for providing old age pensions shall not be construed as a vested right in the pensioners.

En. Sec. 12, Ch. 72, L. 1923.

4541.13. Other relief forbidden. During the continuance of the old age pension no recipient shall receive any other relief from the state or from any political subdivision thereof except for medical and surgical assistance.

En. Sec. 13, Ch. 72, L. 1923.

4541.14. Alienation of pension forbidden. All old age pensions shall be absolutely inalienable by any assignment, sale, attachment, execution or otherwise, and in case of bankruptcy the old age pension shall not pass to any trustee or other persons acting on behalf of creditors.

En. Sec. 14, Ch. 72, L. 1923.

4541.15. Suspension of pension improperly obtained. If at any time the old age pension commission has reason to believe that any old age pension certificate has been improperly obtained, it shall cause special inquiry to be made by the county attorney and may suspend payment of any installment pending the inquiry. If, on inquiry, it appears that the certificate was improperly obtained, it shall be canceled by the old age pension commission, but if it appears that the certificate was properly obtained, the suspended installment shall be payable in due course.

En. Sec. 15, Ch. 72, L. 1923.

4541.16. Penalty for false statements, etc. Any person who by means of a wilfully false statement or representation, or by impersonation, or other fraudulent device, obtains, or attempts to obtain, or aids or abets any other person to obtain:

(a) An old age pension certificate to which he is not justly entitled.

(b) A larger amount of assistance than that to which he is justly entitled.

(c) Payment of any forfeited installment grant.

(d) Or aids and abets in the buying or in any way disposing of the property of an old age pension recipient without the consent of the old age pension commission, shall be guilty of a misdemeanor and upon conviction thereof shall be sentenced to pay a fine of not exceeding five hundred dollars (\$500) or to undergo imprisonment not exceeding six months, or both.

En. Sec. 16, Ch. 72, L. 1923.

4541.17. Penalty generally. Any person who violates any provisions of this act for which no penalty is specifically provided shall be subject to a fine not exceeding five hundred (\$500) dollars or to undergo imprisonment not exceeding six months, or both.

(a) Where an old age pension recipient is convicted of an offense under this section, the old age pension [commission] may cancel the pension certificate in respect to the issue of which the offense was committed.

En. Sec. 17, Ch. 72, L. 1923.

4541.18. Cancellation of certificate. If any recipient under this act is convicted of any crime, misdemeanor, or felony, or other offense, punishable by imprisonment for one month or longer period, the old age pension commission shall direct that payment be not made during such period. Furthermore, if the recipient is found incapable of taking care of his money or himself on the testimony of reputable witnesses, the old age pension commission may direct the installment of his pension to be paid to any other reputable person for his benefit or may suspend same for such period as it deems fit.

En. Sec. 18, Ch. 72, L. 1923.

4541.19. Suspension of payments when. In case of forfeiture of any old age pension certificate the person whose pension is so forfeited shall be disqualified from making any application for a new certificate until the expiration of one year from the date of forfeiture.

En. Sec. 19, Ch. 72, L. 1923.

4541.20. Counties to pay pension and expenses. The funds for the payment of the old age pensions shall be furnished by the respective counties and all expenses incurred in the administration of this act shall be paid from the funds of the several counties, and paid by the county treasurer from the poor fund of such county.

En. Sec. 20, Ch. 72, L. 1923.

4541.21. Annual report of commission. Within ninety (90) days after the close of the calendar year the old age pension commission of each county shall make a report of the preceding year to the state auditor of the state of Montana stating:

- (a) The total number of recipients.
- (b) The amount paid in cash.
- (c) The total number of applications.
- (d) The number granted pension, the number denied, the number canceled during the year and such other information as the state auditor may deem advisable.

En. Sec. 21, Ch. 72, L. 1923.

4541.22. Procedure, how regulated. All methods of procedure in hearings, investigations, recording, registration, and accounting pertaining to the old age assistance under this act shall be in accordance with the rules and regulations as laid down from time to time by the old age pension commission.

En. Sec. 22, Ch. 72, L. 1923.

4541.23. Effect of amendment or repeal. Every old age pension granted under the provisions of this act shall be deemed to be granted and shall be held subject to the provisions of any amending or repealing

act that may hereafter be passed and no recipient under this act shall have any claim for compensation or otherwise by reason of his old age pension being affected in any way by any such amending or repealing act.

En. Sec. 23, Ch. 72, L. 1923.

4541.24. Gender of terms. That wherever in this act the masculine pronoun is used, it shall be held to include the feminine pronoun also.

En. Sec. 24, Ch. 72, L. 1923.

4541.25. Title of act. This act shall be named and cited as the Old Age Pension Act of the State of Montana.

En. Sec. 25, Ch. 72, L. 1923.

CHAPTER 14.

COUNTY FAIRS.

4545. County fair commission—Appointment. The board of county commissioners of each county of Montana may, at their regular meeting in December in 1927, appoint from the electors of their respective counties, five responsible persons to constitute a county fair commission, three of said members to be appointed for a term of two years, and two for a term of one year, and until their successors are appointed. At the regular meeting in December in each year thereafter, the said board of county commissioners of each county shall appoint members of the said county fair commission to succeed the members whose terms then expire, such appointments to be for a term of two years. Such persons shall be well qualified to perform the duties of organizing and successfully carrying on the county fair.

In case there is in any county a fair association, horticultural or agricultural society, the board of county commissioners may appoint said fair commission from the members of said fair association, horticultural or agricultural society, giving preference in said appointment to the officers of the said association or societies.

Amd. Sec. 1, Ch. 30, L. 1927.

4549. Appropriation and tax levy for county fairs. The board of county commissioners of their respective counties may appropriate annually out of the general fund of the county treasury to the county fair commission a sum not to exceed two thousand five hundred dollars (\$2,500), to be expended by the county fair commission for the purpose of holding a county fair, or advertising the products and resources of their county. In addition to the appropriation above provided for, or in lieu thereof, the county commissioners of any county in Montana shall have the power to levy an ad valorem tax of one and one-half (1½) mills or less on each dollar of taxable property in such county, for the purpose of securing, equipping, and maintaining a county fair, including the purchase of land for such purpose, and the erection of such buildings and other appurtenances as may be necessary; provided, however, that no portion of said appropriation or tax levy shall be expended for horse-racing.

Amd. Sec. 1, Ch. 32, L. 1927.

CHAPTER 15.

BOXING AND WRESTLING MATCHES—STATE ATHLETIC COMMISSION.

4551. Creation state athletic commission. There is hereby created an athletic commission to be known as the state athletic commission, consisting of three persons, to be appointed by the governor. One of said persons shall be appointed for a period of one year from and after the first of March, following his appointment, and one for a period of three years from and after the first of March, following his appointment, and upon the expiration of the terms of such respective commissioners, the governor shall appoint their successors, each to serve for a term of three years, and all to serve until their successors are appointed and qualified. The members of the commission shall serve without compensation but shall be allowed necessary expenses, to be paid by the state treasurer on warrant properly drawn out of the proceed [proceeds] of the tax to be collected as hereinafter provided. The commission shall maintain general offices for the transaction of its business at a place to be by them designated. The members of the commission shall, at their first meeting after their appointment, and on or before the first day of April of each year thereafter, elect one of their number chairman of the commission, shall adopt a seal for the commission and may make such rules for the administration of their office, not inconsistent herewith, as they may deem expedient; and they may hereafter amend or abrogate such rules. Two of the members of the commission shall constitute a quorum to do business; and the concurrence of at least two commissioners shall be necessary to render a choice or decision by the commission.

Amd. Sec. 1, Ch. 103, L. 1927.

4552. Secretary—Appointment—Expenses—Reports. The commission shall appoint, and at its pleasure remove, a secretary to the commission, whose duty it shall be to keep a full and true record of all its proceedings, preserve at its general office all its books, documents and papers, prepare for service such notices and other papers as may be required of him by the commission and to perform such other duties as the commission may prescribe; and he may under the direction of the commission issue subpoenas for the attendance of witnesses before the commission and may, under direction of the commission, administer oaths in all matters pertaining to the duties of his office or connected with the administration of the affairs of the commission. The necessary traveling and other necessary expenses, including the salary of the secretary not exceeding twenty-five dollars (\$25) per month, which shall be determined by the commission, shall be paid monthly by the state treasurer on warrant properly drawn out of the proceeds of the tax to be collected as herein provided. The commission shall annually make to the governor a full report of its proceedings for the year ending with the first day of January, and may submit, with such reports, such recommendations pertaining to its affairs as to it shall seem desirable.

Amd. Sec. 2, Ch. 103, L. 1927.

4553. Duty of secretary county athletic commission.

Rep. Sec. 13, Ch. 103, L. 1927.

(NOTE.—This section is not mentioned in the title of the repealing act.)

4554. Authority of commission — Licenses. The commission shall have, and hereby is invested with, the sole direction, management, and control and jurisdiction over all boxing and sparring matches and exhibitions to be conducted, held or given within the state and by any club, corporation or association; and no boxing or sparring match or exhibition shall be conducted, held or given within the state except pursuant to its authority and in accordance with the provisions of this act. The commission may, in its discretion, issue, and at its pleasure revoke, a license to conduct, hold or give boxing and sparring matches and exhibitions to any club, corporation or association, and which, if it be an amateur athletic association, may be incorporated or organized in accordance with the rules as may be prescribed by the commission. Nothing in this act shall be construed as relating to or prohibiting amateur boxing or wrestling exhibitions conducted in and by regularly organized amateur clubs, schools and gymnasiums. Every license shall be subject to such rules and regulations, and amendments thereof, as the commission may prescribe. Every application for a license, as herein provided for, shall be in writing and shall be addressed to the commission and shall be verified by such officer of the club, corporation or association on whose behalf the application may be made. It shall contain a recital of such facts as, under the provisions hereof, will show the applicant entitled to receive a license, and in addition thereto, such other facts and recitals, as the commission may by rules require to be shown.

Amd. Sec. 3, Ch. 103, L. 1927.

4555. Regulation of buildings. All buildings or structures used or intended to be used, for the purpose of this act, shall be properly ventilated and provided with fire exits and fire-escapes, if there need be, and in all manner conform to the law, ordinances and regulations pertaining to buildings in the city, town, or village where situated. Where a part of a building or structure is used for the purpose set forth in this act, this section shall apply in the same manner.

Amd. Sec. 4, Ch. 103, L. 1927.

4556. Regulation of bouts. No boxing or sparring match or exhibition shall be of more than fifteen rounds in length; and the contestants shall wear during such contests, gloves weighing at least six ounces. Provided, also, that no person or persons may take part in an exhibition or sparring match unless they have first passed a rigorous physical examination to determine their fitness to engage in any such exhibition. Said examination to be conducted by a regular practicing physician, said physician to be designated by the commission.

Amd. Sec. 5, Ch. 103, L. 1927.

4557. Fake bouts prohibited—Penalty. Any club, corporation or association which may conduct, hold or give, or participate in, any sham

or fake boxing or sparring match or exhibition shall thereby forfeit license issued in accordance with the provisions of this act, which shall therefor be, by the commission, canceled and declared void; and it shall not thereafter be entitled to receive another such or any license pursuant to the provisions of this act.

Amd. Sec. 6, Ch. 103, L. 1927.

4558. Penalty for fake boxing. Any contestant who shall participate in any sham or fake boxing or sparring match or exhibition shall be penalized in the following manner: For the first offense, he shall be restrained for a period of six months, such period to begin immediately after the occurrence of such offense, from participating in any competition to be held or given by any club, corporation or association duly licensed to give or hold such boxing or sparring match or exhibition; for the second offense he shall be totally disqualified from further admission or participation in any boxing contest held or given by any club, corporation or association duly licensed for said purpose.

Amd. Sec. 7, Ch. 103, L. 1927.

4559. Clubs to pay tax—Veterans' memorial fund. Every club, corporation or association which may hold or exercise any of the privileges conferred by this act, shall within twenty-four hours after the determination of every contest furnish to the commission a written report, duly verified by one of its officers, showing the number of tickets sold for such contest and the amount of gross proceeds thereof, and such other matters as the commission may prescribe, and shall also with [within] the said time pay to the county treasurer a tax of five per centum (5%) of its total gross receipts from the sale of the tickets of admission to such boxing or sparring match or exhibition, which shall be transmitted to the state treasurer by the county treasurer within a period of ten days after its collection and be applied to the payment of the expenses of the commission, and the salary of the secretary of the commission, as herein provided. And the money so collected shall be paid to the state treasurer to be kept and held in a separate and special fund to be designated the "veterans' memorial fund," and used exclusively for the purposes herein provided. The moneys so received and held by the state treasurer in such special fund shall be used and devoted for the expenses above specified and the balance to be held and retained exclusively for the erection and maintenance of a suitable veterans' memorial building. Such funds to be drawn upon and expended only upon proper and legal claims made against the fund, first presented and approved by the state board of examiners. All money in the said fund from time to time may be invested by the state treasurer in any manner provided for by law for the investment of the state moneys.

Amd. Sec. 8, Ch. 103, L. 1927.

4560. Bond. Before any license shall be granted to any club, corporation, or association to conduct, hold or give any boxing or sparring match or exhibition, such applicant therefor shall execute and file with the state treasurer a bond in the sum of five thousand dollars (\$5,000) payable to the state of Montana, to be approved as to form by the attorney general

of the state of Montana, and as to the sufficiency of the sureties thereon by the commission, which said bond shall be conditioned upon the payment of the tax hereby imposed. Upon the filing and approving of such bond, the commission shall issue to such applicant a license as hereinbefore provided.

Amd. Sec. 9, Ch. 103, L. 1927.

4561. Penalty for failure to report or pay tax. Whenever any such club, corporation or association shall fail to make a report of any contest at the time prescribed by this act or whenever such report is unsatisfactory to the commission, it may examine or cause to be examined the books and records of such club, corporation or association, and subpoena and examine under oath its officers and other persons as witnesses for the purpose of determining the total amount of its gross receipts for any contest and the amount of tax due pursuant to the provisions of this act, which tax he may, upon and as the result of such examination, fix and determine. In case of the default in the payment of any tax so ascertained to be due, together with the expenses incurred in making such examination, for a period of twenty days after notice to such delinquent club, corporation or association of the amount at which the same may be fixed by the commission, such delinquent shall ipso facto, forfeit its license and shall be thereby disqualified from receiving any new license or any renewal of license; and it shall in addition forfeit to the state of Montana the sum of five hundred dollars (\$500), which may be recovered by the attorney general in the name of the state of Montana in the same manner as other penalties are by law recovered, and when collected shall be used and applied as other moneys received under the provisions hereof.

Amd. Sec. 10, Ch. 103, L. 1927.

4562. Penalty. Any person who violates any of the provisions of this act, for which a penalty is not herein expressly prescribed, shall be guilty of a misdemeanor.

Amd. Sec. 11, Ch. 103, L. 1927.

4562¹/₂. Transfer moneys to veterans' memorial fund. All moneys which have heretofore been collected and received by the state treasurer and by him credited to the "soldiers' and sailors' home fund," amounting at this time to the sum of eleven thousand ninety-eight dollars and six cents (\$11,098.06), are hereby ordered and directed to be transferred by the state treasurer to the "veterans' memorial fund," and there kept and held for the erection and maintenance of a veterans' memorial building, and for other expenditures authorized by this act. All additional funds which may come into the possession of the state treasurer under the terms of the existing law shall be credited to and held in the "veterans' memorial fund." The state is hereby authorized and empowered to accept and receive gifts, bequests and devises for the proposed veterans' memorial building, and the moneys so received shall be held and expended only for the construction of such memorial and for its support and maintenance.

En. Sec. 12, Ch. 103, L. 1927.

CHAPTER 16.

COUNTY FREE LIBRARIES.

4565. County librarian — Appointment — Compensation. Upon the establishment of a county free library, the board of county commissioners may appoint a county librarian who shall receive not less than one hundred dollars per month and who may be removed for cause, after the hearing, by said board. Any person who is a graduate of a library school, or has had two years' practical experience in a library of not less than three thousand volumes, shall be eligible to the office of county librarian; provided, that, from and after the creation and organization of a state board of library examiners no person shall be eligible to the office of county librarian, unless, prior to his appointment, he has received from said board of library examiners a certificate of qualification for the office.

En. Sec. 1, Ch. 56, L. 1923.

CHAPTER 17.

RURAL IMPROVEMENT DISTRICTS.

4575. Resolution of intention—Publication, mailing and notice.

Failure to give the notice required by this section in the attempted creation of a rural improvement district deprived the county of jurisdiction to proceed and a property owner, in his action to enjoin the collection of the tax against his property to pay for the improvement, was not estopped to deny the validity of the assessment by his omission to object to the creation of the district prior to its completion. *Billings Bench Water Assn. v. Yellowstone County*, 70 Mont. 401, 225 Pac. 996.

Notice of adoption of resolution to create improvement district, given to holder of legal title to part of land, the holder of legal title to remainder having signed petition for improvement, was sufficient under section 2, chapter 156, L. 1917, to validate assessment on land belonging to national bank, though no notice was given receiver of bank or his assignor. *Swords v. Nutt*, 11 Fed. (2d) 936.

4577. Protests against creation or extension of district—Hearing.

Cited as section 4, chapter 67, L. 1919, in *Billings Bench Water Assn. v. Yellow-*

stone County, 70 Mont. 401, 406, 225 Pac. 996.

4578. Jurisdiction attaches, when—Resolution creating district.

Cited as section 5, chapter 67, L. 1919, in *Billings Bench Water Assn. v. Yellow-*

stone County, 70 Mont. 401, 406, 225 Pac. 996.

4584. Assessment of property—Apportionment of costs—Railroads.

Special improvement assessments are not "taxes." *Swords v. Simineo*, 68 Mont. 164, 216 Pac. 806.

4585. Federal property omitted from assessment.

An irrigation company engaged in the reclamation of arid lands under the Carey Act is not a mandatory of the federal government and therefore not exempt from assessments for special improvements. *Billings B. W. Assn. v. Yellowstone County*, 70 Mont. 401, 225 Pac. 996.

tional bank to recover an assessment paid under protest for improvements in a rural improvement district under chapter 156, L. 1917, on the ground that the bank was a "mandatory" of the government and therefore exempt, complaint held insufficient for failure to allege that the property was excluded from liability in the resolution of intention to create the

In an action by the receiver of a na-

district or that plaintiff acquired the property prior to the time it was passed by the board of county commissioners. *Swords v. Simineo*, 68 Mont. 164, 216 Pac. 806.

A national bank is not a "mandatory"

of the government within the meaning of this section, and therefore not exempt from payment of special assessments for improvements in a rural improvement district. *Swords v. Simineo*, 68 Mont. 164, 216 Pac. 806.

4595. County treasurer to collect assessments.

This and sections 4598 and 4599 were cited as sections 21, 24 and 25 of chapter 67, L. 1919, in *Billings Bench Water*

Assn. v. Yellowstone County, 70 Mont. 401, 408, 409, 225 Pac. 996.

CHAPTER 18.

CLAIMS AGAINST COUNTIES—COUNTY WARRANTS.

4605. All claims must be itemized.

Cited in *Manley v. Harer et al.*, 73 Mont. 253, 263, 235 Pac. 757.

4610. Appeals.

Cited in *State ex rel. Lockwood v. Tyler*, 64 Mont. 124, 131, 208 Pac. 1081.

4612. Warrants—Specification—Presentation and payment.

See *State ex rel. Board of County Commrs. v. District Court et al.*, 62 Mont. 275, 204 Pac. 600, for statement relative

to the extent to which this section was amended by the *Mothers' Pension Act*.

Cited in *State ex rel. Case v. Bolles et al.*, 74 Mont. 54, 65, 238 Pac. 586.

CHAPTER 19.

COUNTY FINANCES, BONDS AND WARRANTS.

4614. Refunding bonds. The board of county commissioners of any county is hereby vested with the power and authority to issue and negotiate, on the credit of the county coupon bonds to an amount sufficient to enable the county to fund all legal outstanding warrants, orders or bonds; or for the purchase of necessary public building sites, and for the construction of necessary public buildings, public highways, and bridges; for the ordinary and necessary expenses of the county authorized by the general laws of the state; and also for the purpose of enabling any county to liquidate its indebtedness to another county incident to the creation of a new county or the change of any county boundary line; not exceeding in the aggregate, including outstanding bonded indebtedness, five per centum of the assessed value of the taxable property within such county, to be ascertained by the last assessment for state and county taxes previous to the issuing of such bonds; provided, however, that the limitation of five per centum of the assessed value of the property upon which taxes are levied and paid within such county shall not apply in cases where county buildings, bridges or highways are destroyed or damaged by an act of God, disaster, catastrophe, or accident, which shall be deemed an emergency and bonds may be issued and negotiated to provide for such emergency as provided in this act not exceeding, in the aggregate, including outstanding bonded indebtedness, eight per centum of the assessed value of the property upon which taxes are levied and paid within said county, to be ascertained as hereinbefore

provided; and provided further, that no such bonds (except bonds to fund or refund outstanding warrants or bonds issued prior to May 1, 1923, and except bonds for the purpose of enabling a county to fund its outstanding warrants or orders issued to liquidate its indebtedness to another county incident to the creation of a new county or the change of any county boundary line) shall be issued, negotiated or sold for any purpose whatever, or exchanged for outstanding warrants, orders or bonds, without the approval of a majority of the electors of such county, (qualified as provided in chapter 98, Session Laws 1923,) voting at an election at which the question of issuing and selling or exchanging such bonds shall be submitted to the electors of such county, and which election shall be held in accordance with the provisions of section 4719 to 4722, inclusive, of the Revised Codes of Montana, 1921, and shall be governed and controlled thereby. The term "assessed value," as used herein, means the value ascertained or determined by taking the percentage of the full and true value provided, or to be provided, by law, rule or practice, as the basis for the imposition and computation of taxes.

Such bonds shall not be sold or exchanged at less than their par value with accrued interest, if any, and no brokerage, legal or other fees or commissions of any kind shall be paid any person for preparing or negotiating, or assisting in the preparation, negotiation, sale or exchange of such bonds.

Such bonds shall be either amortization or serial bonds, as such bonds are defined in chapter 38, Session Laws 1923, and shall bear such rate of interest as shall be fixed by the board of county commissioners but not exceeding six per centum per annum, which interest shall be payable semi-annually. Such bonds shall not be issued for a longer period than twenty years, and all bonds remaining unpaid may be paid and redeemed at any time after the expiration of five years from their date of issue, provided such time and option be stated upon the face of such bonds.

When serial bonds are issued the interest thereon shall be represented by interest coupons payable on the first days of January and July of each year, and such bonds shall be paid in equal annual installments, one installment being payable each year, the amount thereof to be paid and redeemed in each year to be determined by dividing the total amount of bonds to be issued by the total number of years for which said bonds are to be issued; provided, however, that if the date of issue of the bonds shall be prior to the date of the fixing of the county tax levies for the year in which such bonds are issued the first interest on all bonds shall be paid and the first installment of bonds shall be paid and redeemed on the first day of January following the date of the issue of such bonds, but if such date of issue shall be after the date of the fixing of the county tax levies for the year in which the bonds are issued then the first interest on all bonds shall be paid, and the first installment of the bonds shall be paid and redeemed on the first day of January of the second year following the date of issue.

Amd. Sec. 1, Ch. 21, L. 1923; Amd. Sec. 1, Ch. 84, L. 1925; Amd. Sec. 1, Ch. 99, L. 1925. prohibits county commissioners from issuing bonds in excess of a certain amount. Chapter 129 of the same Laws, approved March 8, 1923, confers upon the board of county commissioners power to issue

bonds to take up warrants uttered by the board of trustees of a county high school where its funds are tied up in an insolvent bank, if a levy and tax to pay outstanding warrants "will exceed the limit of the taxes permitted by law to be levied." Held, under the above rule, that chapter 129 being a special statute and chapter 21 a general one, the former is controlling. *Frankze v. Wright et al.*, 70 Mont. 531, 226 Pac. 524.

This section as amended, substituting the taxable value (the percentage of the assessed value upon which taxes are made

computable by sections 1999 and 2000, Rev. Codes 1921) for the assessed value (the value fixed upon taxable property by the county assessor and county and state boards of equalization) of property as the basis for determining the limit of county bonded indebtedness, thus in effect fixing a lower limit of indebtedness than that prescribed by section 5, article XIII of the state constitution, is a valid exercise of legislative authority. *Heckman v. Custer County et al.*, 70 Mont. 84, 223 Pac. 916.

4622. Tax—Bond fund. The board of county commissioners, at the time of making the levy of taxes for county purposes must levy a tax for that year upon all taxable property in the county for the payment of interest on and payment and redemption of the bonds of each series or issue outstanding. If such levy is made for the purpose of paying interest on and principal of any series or issue of bonds issued prior to May first, 1923, then such levy must be high enough to raise an amount sufficient to pay one year's interest on all of such bonds then outstanding and to pay such portion of the principal of such bonds as will become due and payable during the ensuing year, if any; and in any event such levy must be high enough to raise an amount sufficient to pay one year's interest on all of such bonds then outstanding and to place in the sinking and interest fund, for the payment and redemption of such bonds on their maturity, an amount not less than a sum produced by dividing the total amount for which such series or issue of bonds was originally issued by the whole number of years for which such bonds were originally issued to run. If such levy is made for the purpose of paying the interest on and principal of bonds (other than amortization bonds) issued on or after May 1, 1923, then such levy must be high enough to raise an amount sufficient to pay one year's interest on all of said bonds then outstanding and to pay such portion of the principal of such bonds as will become due and payable during the ensuing year, if any; and in any event such levy must be high enough to raise an amount sufficient to pay one year's interest on all of such bonds then outstanding and to place in the sinking and interest fund, for the payment and redemption of such bonds on their maturity, an amount not less than a sum produced by dividing the whole amount of the principal of all such bonds then outstanding and unpaid by the number of years such bonds have yet to run before their maturity. If such levy is made for the purpose of paying the interest on and principal of amortization bonds, then such levy must be high enough to raise an amount sufficient to pay all amounts becoming due and payable for interest and principal during the year next ensuing. The county treasurer shall keep in his books a special and separate sinking and interest fund account for each issue or series of bonds, which account shall at all times show the exact condition of such fund, and all moneys derived from such tax levies shall be paid into the county treasury and deposited to the credit of the proper sinking and interest fund, and shall be used for the payment of the interest on and principal of such bonds, and for no other purpose

whatever; provided, that any money now standing to the credit of any such sinking fund or interest fund, received from taxes heretofore levied and collected for the purpose of paying the interest on or principal of such bonds, shall be transferred to and become a part of such sinking and interest funds, and any such taxes which have become delinquent and shall hereafter be paid shall be deposited to the credit of such sinking and interest funds.

If the board of county commissioners of any county shall fail or neglect to make a levy in any year sufficient to raise the amount necessary for the payment of interest on and principal of any bonds becoming due and payable during such year, or to place in the sinking and interest fund for such issue or series of bonds the proper amount, as herein provided, the holder of any bond of such issue or series, or any taxpayer paying taxes on property situated in such county, may apply to the district court of the county issuing such bonds for a writ of mandate to compel the board of county commissioners of such county to make a proper and sufficient levy for such purposes, and if, upon the hearing of such application, it shall appear to the satisfaction of the court that the board of county commissioners has failed or neglected to make any levy whatever for such purposes, or has made a levy but that the same is insufficient to raise the amount required to be raised under the provisions of this section, the court shall determine the amount of such deficiency and shall issue a writ of mandate directed to and requiring such board of county commissioners, at the next meeting thereof for the purpose of making and fixing county tax levies, to make and fix a tax levy against all taxable property in the county sufficient to raise the amount of such deficiency, which levy shall be in addition to the levy required to be made for the then current fiscal year; provided, that any costs which may be allowed or awarded the petitioner in any such proceeding shall be paid by the members of such board of county commissioners and shall not be a charge against such county.

Amd. Sec. 1, Ch. 99, L. 1925.

4622.1. Bond sinking funds—How invested. That the board of county commissioners of any county of the state of Montana and the council of any city or town of the state of Montana, shall have the power and authority and shall invest so much of the bond sinking fund of any such county, city or town, as is not needed for the payment of interest coupons, in United States government bonds or securities, state bonds or securities, county or city bonds, or other bonds or securities which are supported by general taxation, except irrigation bonds, provided however that all of such investments must first be approved by the state examiner and that said bonds or securities must be due and payable at least ninety days before the obligations for which such bonds were raised, shall become due and payable. Such bonds and security shall be in the custody of such county, city or town treasurer, and be held by him for the use and benefit of such county, city or town as the case may be. It shall be the duty of such treasurer to properly protect such securities by insurance, the use of safety deposit boxes, or other means, the expense of which shall be a proper charge against the particular county, city or town. All moneys derived from

interest on sinking fund investments as herein authorized, shall be credited by the treasurer of such county, city or town, to the same sinking fund from which the investment was made.

En. Sec. 1, Ch. 86, L. 1923.

4625. County warrants—Interest.

Cited in State ex rel. Case v. Bolles et al., 74 Mont. 54, 65, 238 Pac. 586.

4631. County commissioners to transfer funds.

Under this section the board of county school fund) to other funds. State ex commissioners may transfer only the surplus in any county fund (except the rel. Board of County Commrs. v. District Court, 62 Mont. 275, 204 Pac. 600.

4632. Petty cash fund. The board of county commissioners, with the approval of the state examiner, may set aside a sum of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) out of the general fund, which shall be known as a petty cash fund, for the purpose of paying incidental expenses such as freight, express, postage and other similar items which must be paid in cash at time of delivery, in counties having a county auditor, the county auditor shall be responsible for expenditures from the petty cash fund. In counties not having a county auditor, the county clerk shall be responsible for expenditures from the petty cash fund.

Amd. Sec. 1, Ch. 141, L. 1925.

Cited in State ex rel. Case v. Bolles et al., 74 Mont. 54, 65, 238 Pac. 586.

4633. Surplus of contingent fund. At the close of the fiscal year, June 30, 1925, all moneys in the contingent fund in excess of the amount necessary for the retirement of the outstanding warrants against said fund including the interest on said warrants, shall be transferred to the general fund of the county. In case there is not sufficient money in said fund to retire the outstanding warrants as above provided, then and in that case, the board of county commissioners shall transfer the required amount from any funds available in the general fund. Provided further, that if there is not sufficient money available in the general fund, then and in that case, the same shall be provided for in the general fund tax levy for the ensuing year. When all warrants issued on the contingent fund are paid the fund shall be abolished.

Amd. Sec. 2, Ch. 141, L. 1925.

4639.1. Public bonds—Issuance on amortization plan. Whenever the state of Montana, or any county, city, town, school district, or any other taxing unit in the state of Montana having the power to issue and negotiate bonds, does hereafter issue its bonds, such bonds shall be payable on the amortization plan if bonds in this form can be sold and disposed of at a reasonable rate of interest. If amortization bonds cannot be negotiated at such reasonable rate of interest, advantageous to the people for whose benefit the same are issued, then in such case, serial bonds may be issued in place of amortization bonds.

En. Sec. 1, Ch. 38, L. 1923.

State educational bonds issued by authority of sections 5606-5614, are valid and not affected retroactively by this act, providing that public bonds shall be made payable on the amortization

plan if bonds in that form can be sold at a reasonable rate of interest. State ex rel. Tatem v. Dixon et al., 70 Mont. 90, 223 Pac. 832.

This act, providing that the state, municipal corporations or districts in issuing bonds shall give preference to amortization bonds and accept serial bonds only when the former cannot be negotiated to good advantage, is inapplicable to the issuance of irrigation district bonds, and the provisions of the irrigation law (secs. 7210-7212 and 7214),

dealing with the subject specially, are controlling. Walden v. Bitter Root Irr. Dist., 68 Mont. 281, 217 Pac. 646.

This act, declaring that when the state or a subdivision thereof issues bonds they shall be made payable on the amortization plan unless they cannot be negotiated at a reasonable rate of interest in which event serial bonds may be issued in their place, is not retroactive. State ex rel. Mills v. Dixon (Educational Bonds, Case), 68 Mont. 526, 219 Pac. 637.

4639.2. Definition of terms. 1. The term "amortization bonds" is hereby defined as meaning that kind of bonds on which part of the principal is required to be paid each time interest becomes due and payable, which part payment on the principal increases at each succeeding installment in the same amount that interest payment decreases, so that the combined amount due on principal and interest on each succeeding due date remains the same until the bond is paid in full.

2. The term "serial bonds" is hereby defined as meaning that form of bonds under which one or more individual bonds become due and must be paid at regular intervals during the term for which the bonds were issued, so that the last bond will be taken up and paid at the expiration of the term for which the bonds were issued.

En. Sec. 2, Ch. 38, L. 1923.

4639.3. Consideration of bids—Kind of bonds. In considering bids for various classes of bonds, the board or officers negotiating the same, shall take into account not only the rate of interest offered or demanded on the various classes, but also what rate of interest can be realized on such sinking funds as may be required for the payment of serial bonds, and also every other known element affecting the total cost of the bond when paid in full. That kind of bond shall be issued which in the totality of its effect is the most advantageous to the borrower. Provided, however, that this act shall not be so construed as to authorize a higher rate of interest on any kind or class of bond than six percentum per annum.

En. Sec. 3, Ch. 38, L. 1923.

4639.4. Notice of sale—Contents. The notice given of the sale of any of the bonds covered by sections 1 and 2 of this act shall have included therein information to the effect that amortization bonds are the first choice and that serial bonds are the second choice. The inclusion of this information as to the order of preference of these [this] kind of bonds in the notice of sale, shall be deemed to be an essential part of such notice, and the omission of this information shall invalidate the issuance of the bonds under such notice.

En. Sec. 4, Ch. 38, L. 1923.

4639.5. Copy notice to register state land. A copy of the notice of sale of any kind of the bonds covered by this act shall be forwarded to

the register of state lands of the state of Montana in ample time before the date of sale.

En. Sec. 5, Ch. 38, L. 1923.

4639.6. Investment county money in county warrants authorized. Whenever the county has under its control any moneys in any special fund subject to deposit which in the judgment of the board of county commissioners it would be advantageous to invest in county warrants, the county commissioners are authorized in their discretion to direct the county treasurer to purchase county warrants of the same county, thereafter issued against funds in which there is not sufficient money to pay such county warrants at the time of issuance, and in case of such purchase the county commissioners shall designate the fund or funds, to be so invested, and shall fix the amount thereof, and shall also designate the county warrant or warrants which are to be purchased by such funds. The county clerk and recorder shall thereupon cause to be attached to, or stamped, written or printed upon the warrants so ordered to be purchased a notice to the effect that the county will exercise its preference right to purchase such warrant. The county treasurer shall thereafter when such county warrant is presented to him, purchase the same out of the proper fund as designated by the board of county commissioners, and the warrant so purchased shall be registered as other county warrants, and bear interest as provided by law. When the designated amounts have been invested the county treasurer shall notify the county clerk and recorder.

En. Sec. 1, Ch. 144, L. 1927.

CHAPTER 21.

INDEBTEDNESS FOR GENERAL DROUGHT RELIEF.

4700. Application for relief—Contents.

Cited in *Fergus County v. First State Bank of Hilger*, 67 Mont. 1, 3, 213 Pac. 1114.

CHAPTER 23.

QUESTION OF RAISING MONEY TO BE SUBMITTED TO A VOTE.

4717. Commissioners not to borrow money except as herein provided.

Cited as section 2933, Rev. Codes, in *Examiners*, 59 Mont. 557, 567, 197 Pac. State ex rel. Rankin v. State Board of 988.

CHAPTER 24.

COUNTY OFFICERS—ENUMERATION, QUALIFICATIONS, BONDS AND GENERAL PROVISIONS.

4731. County and township officers may generally appoint deputies at discretion.

Under this section and section 420, a county attorney may appoint a deputy to serve without pay and such deputy may legally act in the name of his principal in the filing of informations and

the prosecution of criminal actions. *State v. Crouch*, 70 Mont. 551, 227 Pac. 818.

Cited in *In re Claims of Hyde*, 73 Mont. 363, 366, 236 Pac. 248.

4735. Keep office at county seat.

Cited in *Atkinson v. Roosevelt County et al.*, 66 Mont. 411, 419, 214 Pac. 74.

4736. What offices to be kept open at county seat.

Cited in *In re Claims of Hyde*, 73 Mont. 363, 369, 236 Pac. 248.

4749. Penalties.

Cited in *Atkinson v. Roosevelt County et al.*, 66 Mont. 411, 419, 214 Pac. 74.

CHAPTER 25.

COUNTY TREASURER.

4750. Duties of county treasurer.

Cited in *State v. McGraw*, 74 Mont. 152, 156, 240 Pac. 812; *Lockwood v. Tyler*, 64 Mont. 124, 130, 208 Pac. 1081.

4751. County treasurer to issue triplicate receipts. When any money is paid to the county treasurer, he must issue a receipt for such money in triplicate, the original of which shall be delivered to the person paying the same, the duplicate of which shall be delivered to the county clerk and the triplicate shall be retained in his office.

Amd. Sec. 1, Ch. 92, L. 1923.

For text treatment of this subject see vol. 7 Cal. Jur. 481.

4753. Registry of warrants—Interest.

Cited in *State ex rel. Case v. Bolles et al.*, 74 Mont. 54, 65, 238 Pac. 586.

4754. Notice of redemption of warrants.

Sections 4754 and 4756 were cited in *State ex rel. Case v. Bolles et al.*, 74 Mont. 54, 68, 238 Pac. 586.

4755. What it must state and how published.

Cited in *State ex rel. Case v. Bolles et al.*, 74 Mont. 54, 65, 238 Pac. 586.

4756. Priority in payment of warrants.

County warrants must be presented for payment to the county treasurer who must pay same in cash or by check acceptable to the holder. He is without authority to issue a call for the payment of registered warrants "at any of

the banks of the county" and county depositories may not pay out county funds to themselves or others without a check from the treasurer. *State ex rel. Case v. Bolles et al.*, 74 Mont. 54, 238 Pac. 586.

4758. Funds reserved sixty days therefor.

While county warrants are not negotiable instruments in the sense of the law-merchant, and the transferee takes them subject to all legal and equitable defenses to them which existed in the hands of the payee, failure of the transferee to re-present a registered warrant within sixty days after it was called for payment does not render it invalid and may not be relied upon as a defense in an action to compel payment. *State ex*

rel. Case v. Bolles et al., 74 Mont. 54, 238 Pac. 586.

The word "may" appearing in this section, which provides that the board of county commissioners may on application of the holder of a warrant who failed to re-present a warrant within sixty days after issuance of the call for its payment, order the county treasurer to pay it, means must or shall. *State ex rel. Case v. Bolles et al.*, 74 Mont. 54, 238 Pac. 586.

The only penalty a holder of a registered warrant incurs, under this section, for failure to re-present it for payment within sixty days after issuance of the

call is loss of interest thereon. State ex rel. Case v. Bolles et al., 74 Mont. 54, 238 Pac. 586.

4761. Report to board of commissioners each session.

Cited in *State v. McGraw*, 74 Mont. 152, 156, 240 Pac. 812.

4767. Deposit of public funds. It shall be the duty of all county, city and town treasurers to deposit all public moneys in their possession and under their control in any solvent bank or banks located in the county, city or town of which such treasurer is an officer, subject to national supervision or state examination, as the board of county commissioners, in the case of a county, or of the council in the case of a city or town, may designate, and no other. The sums so deposited shall bear uniform interest at the rate of not more than two per centum (2%) per annum, payable quarter annually. The treasurer shall take from such banks such security as the board of county commissioners, in the case of a county, or the council, in the case of a city or town, may prescribe, approve and deem fully sufficient and necessary to insure the safety and prompt payment of all such deposits on demand, together with the interest thereon. Such securities shall consist of bonds of some surety company authorized to do business in the state of Montana, or bonds guaranteed by such companies directly or indirectly, bonds and securities of the United States government and its dependents, bonds and warrants of the state of Montana or of any county, city, town or school district of Montana, personal bonds, as hereinafter provided, when accompanied by a sworn statement of the resources and liabilities of each of the sureties thereon, which shall be attached and made a part of the bond and corporation bonds issued in the United States of America, which are quoted on the New York market, which shall be acceptable at not to exceed ninety per cent (90%) of such market quotation. Provided, further, that when negotiable securities are furnished, such securities may be placed in trust and the trustee's receipt may be accepted in lieu of the actual securities when such receipt is in favor of the treasurer, his successors and the state of Montana, and the form of receipt and the trustee have been approved by the state examiner or superintendent of banks. All warrants or other negotiable securities must be properly assigned or indorsed in blank. It shall be the duty of the board of county commissioners in the case of county funds, or the council in the case of funds of a city or town, upon the acceptance and approval of any of the above mentioned bonds or securities, to make a complete minute entry of such acceptance and approval upon the record of their proceedings, and such bonds and securities shall be re-approved at least quarter annually thereafter. When more than one bank is available in any county, for the deposit of county funds, or in any city or town for the deposit of city or town funds, such deposits shall be distributed ratably among all of such banks qualifying therefor, substantially in proportion to the paid-in capital and surplus of each such bank willing to receive such deposits under the terms of this act, and it shall be the duty of said county, city or town treasurer to prorate all such deposits among all of the banks qualified to receive the same as in this

act provided, to the end that an equitable distribution of such deposits shall be maintained. Whenever it shall come to the attention of the state examiner that the funds of any county, city or town are not properly distributed as provided in this act, the state examiner shall order the treasurer of such county, city or town to distribute said funds in accordance herewith, and if such treasurer shall refuse or neglect to comply with such order, it shall be the duty of the state examiner to institute proceedings against such treasurer at the cost of the county, city or town of which such treasurer is an officer, on the official bond of such treasurer. If no such bank exists in the county, city or town, or if any bank or banks existing therein fails or refuses to qualify under the terms of this act to receive such deposits, then and in such case, or in either of such cases, such moneys as have not been accepted by any bank or banks within said county, city or town, shall be deposited under the terms of this act, in the bank or banks most convenient to such county, city or town, willing to accept such deposits under the terms of this act, and qualified as above provided. Any bank or banks receiving such deposits, shall, through its president and cashier, make a statement quarterly annually of account, under oath, showing all such moneys that have been deposited with such bank during the quarter, the amount of daily balance in dollars, and the amount of interest by such bank or banks credited or paid therefor, and showing that neither such bank nor any officer thereof, nor any person for it, has paid or given any consideration or emolument whatsoever to the treasurer or to any other person other than the interest provided for herein, for or on account of the making of such deposits, with any such bank. All such deposits shall be subject to withdrawal by the treasurer in such amounts as may be necessary from time to time, and no deposit of funds shall be made, or permitted to remain in any bank, until the security for such deposits shall have been first approved by the board of county commissioners in the case of county funds, or by the council in the case of city or town funds, and delivered to the treasurer. All interest paid and collected on such deposits shall be credited to the general fund of the county, city or town to whose credit such funds are deposited. Where moneys shall have been deposited in accordance with the provisions of this act, the treasurer shall not be liable for loss on account of any such deposit that may occur through damage by the elements, or for any other cause or reason occasioned through means other than his own neglect, fraud, or dishonorable conduct.

No personal bond shall be accepted except when such bond is for the purpose of renewing a personal bond now in effect, and from and after March 1, 1929, personal bonds shall not be considered as acceptable security; provided, further, that from and after the passage and approval of this act, no new or additional deposit accounts shall be opened by any treasurer under any personal bond.

Amd. Sec. 1, Ch. 89, L. 1923; Amd. Sec. 1, Ch. 137, L. 1925; Amd. Sec. 1, Ch. 134, L. 1927.

Where a board of county commissioners, acting under chapter 88, L. 1913, had designated a bank a county depository, the county treasurer was, in the

absence of the statute requiring a periodical designation thereafter, justified in continuing to make deposits therein upon receipt of approved securities, until notified to the contrary. State ex rel. Rankin v. Madison State Bank, 77 Mont. 498, 251 Pac. 548.

Chapter 88, L. 1913, not having prescribed that the board of county commissioners in designating a bank as county depository should cause its action to be recorded in its minutes, the board, under the rule that where the mode of the exercise of a power granted to it is not prescribed it may use its own discretion in selecting the mode, could properly choose any method of making known to the treasurer the bank entitled to receive county deposits it deemed adapted for that purpose. *State ex rel. Rankin v. Madison State Bank*, 77 Mont. 498, 251 Pac. 548.

Where a board of county commissioners made an order pursuant to the provisions of chapter 88, L. 1913, designating a certain bank a county depository, but failed to cause such order to be entered in its minutes, the board was properly permitted on a taxpayer's petition to require the receiver of the bank upon its insolvency to recognize the claim of the county as a preferred one on the ground that the deposits therein had been unlawfully made in that the board's order designating the bank a depository had not been entered in its minutes, to prove its action in that regard by oral testimony; the funds were legally deposited and therefore the county was a general creditor and not entitled to a preference. *State ex rel. Rankin v. Madison State Bank*, 77 Mont. 498, 251 Pac. 548.

A bond given in pursuance to this section to insure the safety and prompt payment of county funds deposited by the county treasurer (disregarding an unintelligible clause therein) is a contract for the direct payment of money, warranting the issuance of a writ of attachment against the property of the sureties in an action to recover thereon. *State ex rel. Nauman v. Pondera Valley State Bank*, 77 Mont. 1, 248 Pac. 207.

Chapter 89, L. 1923, providing that a county depository bond shall not be effective until approved by the board of county commissioners, in the manner prescribed, is a special statute and controls even though there be a general statute on the subject inconsistent with it. *State ex rel. Urton v. American Bank & Trust Co.*, 75 Mont. 369, 243 Pac. 1093.

The bond required of county depositories under this section as amended must be approved by the board of county commissioners as an entity, its approval

by the chairman of the board being insufficient. *State ex rel. Urton v. American Bank & Trust Co.* 75 Mont. 369, 243 Pac. 1093.

By the adoption of this section and amendment thereof, requiring the county treasurer to deposit all "public moneys"—which term includes moneys belonging to a school district or other branch of the state government—in his possession in county depositories designated by the board of county commissioners, the treasurer becomes the agent of the county in handling such funds and he and his bondsmen are relieved from liability for their loss occasioned through the failure of the depositories. *State v. McGraw*, 74 Mont. 152, 240 Pac. 812.

The enactment of chapter 128, L. 1923, did not modify or repeal this section so as to relieve the county of its liability under the above act for funds deposited with its treasurer by school districts and by him deposited in county depositories. *State v. McGraw*, 74 Mont. 152, 240 Pac. 812.

Under chapter 137, L. 1925, amendatory of this section, title to moneys deposited by a school district with the county treasurer passes to the county; the moneys become county funds; the county becomes the debtor of the school district and upon redeposit thereof in county depositories is liable to the district for their loss occasioned by such depositories becoming insolvent, such loss being the loss of county and not school district funds. *State v. McGraw*, 74 Mont. 152, 240 Pac. 812.

Held, under *State ex rel. School District v. McGraw*, that a county is liable to an irrigation district for the loss of funds deposited by the latter with the treasurer of the former as required by this section, and redeposited by the treasurer in county depositories which failed. *State ex rel. Cartersville Irr. Dist. v. McGraw*, 74 Mont. 164, 240 Pac. 817.

Cited in *City of Missoula v. Dick et al.*, 76 Mont. 502, 506, 248 Pac. 193; as Chapter 88, L. 1913, in *Pethybridge v. First State Bank of Livingston*, 75 Mont. 173, 182, 243 Pac. 569; *Bignell et al. v. Cummins*, 69 Mont. 294, 304, 36 A. L. R. 634, 222 Pac. 797; as section 3003, Revised Codes, as amended in *State ex rel. City of Cut Bank v. McNamer*, 62 Mont. 490, 495, 205 Pac. 951.

CHAPTER 26.

SHERIFF.

4774. Duties of sheriff. The sheriff must:

1. Preserve the peace.
2. Arrest and take before the nearest magistrate, for examination, all persons who attempt to commit or have committed a public offense;

3. Prevent and suppress all affrays, breaches of the peace, riots, and insurrections which may come to his knowledge;

4. Perform duties of humane officer within his county with reference to the protection of dumb animals;

5. Attend all courts, except justices and police courts, at their respective terms or sessions held within his county, and obey their lawful orders and directions.

6. Command the aid of as many male inhabitants of his county as he may think necessary in the execution of these duties;

7. Take charge of and keep the county jail and the prisoners therein;

8. Indorse upon all notices and process the year, month, day, hour, and minute of reception, and issue therefor to the person delivering it, on payment of fees, a certificate showing the names of the parties, title of paper, and time or [of] reception;

9. Serve all process or notices in the manner prescribed by law;

10. Certify under his hand upon the process of notices the manner and time of service, or, if he fails to make service, the reasons of his failure, and return the same without delay.

Amd. Sec. 1, Ch. 157, L. 1925.

Whether a sheriff needs the assistance of a posse comitatus to suppress a riot is a matter left to his judgment; in summoning it he presumably acts within his authority; he is commander of all he summons to his aid and all under his command are in duty bound to obey his lawful orders. *McCarthy v. Anaconda*

Copper Mining Co., 70 Mont. 309, 225 Pac. 391.

Cited as section 3010, Revised Codes, in *Majors v. County of Lewis and Clark*, 60 Mont. 608, 615, 201 Pac. 268; *State ex rel. Beazley v. District Court*, 75 Mont. 116, 120, 241 Pac. 1075.

For text treatment of this subject see vol. 23 Cal. Jur. 297.

4779. Return prima facie evidence.

The return of an officer upon a search-warrant is prima facie evidence only of the facts stated therein and may, therefore, be overcome by other evidence.

State ex rel. Merrill v. District Court, 72 Mont. 77, 231 Pac. 1107.

Cited in *Rothrock v. Bauman et al.*, 73 Mont. 401, 406, 236 Pac. 1077.

4781. Liability for refusing to levy or sell.

Cited in *State ex rel. Grantier v. Woods*, 67 Mont. 337, 339, 215 Pac. 671;

State ex rel. Duggan v. District Court, 65 Mont. 197, 200, 210 Pac. 1062.

4782. Damages for refusing to pay over money.

This section has application only to cases of intentional delinquency, merely prescribes punishment for wilful or corrupt neglect of duty, and is therefore inapplicable to a case where failure to pay was due to the closing of a bank in which the money was deposited. *Wells-Dickey Co. v. Benjamin*, 74 Mont. 170, 239 Pac. 771.

Since under this section a means is provided for compelling a sheriff to pay moneys which may have come into his hands by virtue of his office, to the person entitled thereto, mandamus does not lie to compel him to do so. *State ex rel. Grantier v. Woods*, 67 Mont. 337, 215 Pac. 671.

4788. When sheriff justified in executing process.

Cited as section 3024, Revised Codes, in *Folsom v. Fisco et al.*, 62 Mont. 194, 197, 204 Pac. 367.

CHAPTER 27.

COUNTY CLERK.

4796. What to be recorded.

Since an option to purchase land is not itself a contract to purchase the land, the book kept by the county clerk and recorder for the recording of contracts for the purchase or sale of real property is not, but the Miscellaneous Record Book required to be kept by subdivision 15

of this section, for entry of "such other writings as are required or permitted by law to be recorded," is the proper book for recordation of such a contract. *Guerin v. Sunburst Oil & Gas Co.*, 68 Mont. 365, 218 Pac. 949.

4799. Indexes to be kept.

Cited in *Guerin v. Sunburst Oil & Gas Co.*, 68 Mont. 365, 369, 218 Pac. 949.

4811. Duties of the county clerk. The county clerk must:

1. Take charge of and safely keep, or dispose of according to law, all books, papers, and records which may be filed or deposited in his office;

2. Act as clerk of the board of county commissioners;

3. Draw warrants on the county treasurer in favor of all persons entitled thereto in payment of all claims and demands chargeable against the county, which have been legally examined, allowed, and ordered paid by the board of county commissioners; also for all debts and demands against the county, when the amounts are fixed by law, and which are not directed to be audited by some other person or tribunal; which warrants shall be signed by the county clerk and the chairman of the board of county commissioners, excepting warrants drawn on the redemption fund;

4. He must keep accounts current with the treasurer, and when any person deposits with the county treasurer any money paid into the treasury, the county clerk shall be furnished by the treasurer with a duplicate of the receipt issued to such person, which duplicate receipt shall be filed in the office of the county clerk, and such county clerk shall charge the treasurer with the amount thereof.

5. Make the annual statement as prescribed in section 4814 of this code.

Amd. Sec. 1, Ch. 79, L. 1923.

Cited in *State ex rel. Lockwood v. Tyler*, 64 Mont. 124, 131, 208 Pac. 1081.
Cited as section 3045, Revised Codes,

in *State ex rel. Bullock v. District Court*, 62 Mont. 600, 601, 205 Pac. 955.

For text treatment of this subject see vol. 7 Cal. Jur. 490.

4814. Annual report of county clerk. Within forty days after the close of each fiscal year, the county clerk shall make out and present to the board of county commissioners and the state examiner, a full true and complete statement of the financial condition of the county. Such statement shall be made out on the form designated by the state examiner and must show:

(1) A detailed description of all of the resources and liabilities of the county and the book value thereof;

(2) The amount of moneys received, showing the source of such revenue;

(3) The amount of moneys disbursed, with the purpose of disbursement;

(4) The operation of each of the cash and warrant accounts, showing the balance at the beginning of the year, the credits, the debits and the balance at the end of the year.

(5) The assessed valuation of the real and personal property of the county, the rate of taxation, the amount of taxes delinquent for the preceding years and such other items as the state examiner may prescribe.

Amd. Sec. 1, Ch. 2, L. 1925; Amd. Sec. 1, Ch. 106, L. 1927. in State ex rel. Bullock v. District Court, 62 Mont. 600, 601, 205 Pac. 955.

Cited as section 2953, Revised Codes,

4814.1. Warrant county clerk to be withheld. The state examiner is hereby authorized to cause the salary warrant of the county clerk of any county to be withheld from said officer until he has complied with the provisions of this section.

Amd. Sec. 1, Ch. 2, L. 1925; Amd. Sec. 1, Ch. 106, L. 1927.

CHAPTER 28.

CLERK OF THE DISTRICT COURT.

4815. Duties and records to be kept.

Cited in State v. Turlock, 76 Mont. 549, 559, 248 Pac. 169; State v. Reed, 65 Mont. 51, 61, 210 Pac. 756. For text treatment of this subject see vol. 5 Cal. Jur. 225.

4818.1. Index books for bonds in criminal cases. That clerks of the district courts of the counties in the state of Montana, shall hereafter keep proper books for indexing bonds given in criminal cases and all such bonds filed therein shall be entered showing the title and docket number of the case in which such bond is filed, the names of principals and sureties on such bonds in alphabetical order, the date and amount of the bond and upon its release, the date of the order or authority for such release.

En. Sec. 1, Ch. 47, L. 1923.

CHAPTER 29.

COUNTY ATTORNEY.

4819. Duties of county attorney.

Cited in State Bank of Outlook v. Sheridan County, 72 Mont. 1, 5, 230 Pac. 1097; as section 3052, Revised Codes, in State v. Vuckovich, 61 Mont. 480, 491, 203 Pac. 491.

4820. Legal advisor of board of county commissioners.

Cited in In re Claims of Hyde, 73 Mont. 363, 366, 236 Pac. 248; State Bank of Outlook v. Sheridan County, 72 Mont. 1, 5, 230 Pac. 1097.

4821. Authority to sue to recover money illegally paid.

Under this section an action to recover county funds unlawfully paid must be brought by the county attorney in the name of the county, it being the real party in interest, and cannot therefore be maintained by a taxpayer. Gregg v. Bayers, 73 Mont. 165, 235 Pac. 337.

4822. Must not act as attorney for claims against his own county.

Cited in *State Bank of Outlook v. Sheridan County*, 72 Mont. 1, 5, 230 Pac. 1097.

CHAPTER 30.

COUNTY AUDITOR.

4824. County auditor—In what class counties chosen. The office of county auditor is hereby created and the same shall exist in all counties of the state of Montana of the first, second, third and fourth classes. Provided, however, that in counties of the fifth class where a county auditor has been elected he shall hold office until the expiration of his present term, but no longer.

Amd. Sec. 1, Ch. 117, L. 1923.

4824.1. Duties, how performed in counties below fifth class. That hereafter the duties heretofore performed by auditors in counties in which they shall have been elected, shall be performed by the same officers charged with the performance of those duties in counties below the fifth class.

En. Sec. 2, Ch. 117, L. 1923.

For text treatment of this subject see vol. 7 Cal. Jur. 475.

4830. Must audit and investigate claims.

Cited in *State ex rel. Lockwood v. Tyler*, 64 Mont. 124, 134, 208 Pac. 1081.

CHAPTER 35.

SALARIES AND FEES OF COUNTY OFFICERS AND DEPUTIES, JURORS AND WITNESSES.

4864. Disposition of fees of county officers. No county officer shall receive for his own use, any fees, penalties or emoluments of any kind, except the salary as provided by law, for any official service rendered by him, but all fees, penalties and emoluments of every kind must be collected by him for the sole use of the county and must be accounted for and paid to the county treasurer as provided by section 4887 of this code and shall be credited to the general fund of the county.

Amd. Sec. 3, Ch. 141, L. 1925.

4868. Salaries, how paid. The salaries of the several county officers and their assistants must be paid monthly out of the general fund of the county, upon the order of the board of county commissioners, except the salary of the county attorney, which is payable monthly, one-half from the general fund of the county and the other one-half from the state treasury upon the warrant of the state auditor, upon the presentation of a certificate from the board of county commissioners stating the amount for which the same is to be drawn.

Amd. Sec. 4, Ch. 141, L. 1925.

4874. Deputies and assistants to county officers—Number and salary, how fixed. That the boards of county commissioners in the several coun-

ties in the state shall have the power to fix the compensation allowed any deputy or assistant under this act; provided, the salary of no deputy or assistant shall be more than eighty per cent of the salary of the officer under whom such deputy or assistant is serving, unless otherwise provided by law; where any deputy or assistant is employed for a period of less than one year the compensation of such deputy or assistant shall be for the time so employed; provided, the rate of such compensation shall not be in excess of the rates now provided for by law for similar deputies or assistants; said boards of county commissioners shall likewise have the power to fix and determine the number of deputy county officers and allow to [the] several county officers a greater or less number of deputies or assistants, than the maximum number allowed by law, when in the judgment of the board of county commissioners of such greater or less number of deputies is or is not needed for the faithful and prompt discharge of the duties of any county office.

Amd. Sec. 1, Ch. 82, L. 1923.

Cited in *State v. Crouch*, 70 Mont. 551, 554, 227 Pac. 818; *Farrell v. Yellowstone County*, 68 Mont. 313, 315, 218 Pac. 559.

4875. Number of deputies allowed.

Cited in *Farrell v. Yellowstone County*, 68 Mont. 313, 316, 218 Pac. 559.

4878. Extra deputies for county officers.

Under this section the board of county commissioners has power to fix the salaries of extra deputies or assistant county officers at any rate it may deem proper,

provided the rate so fixed does not exceed the rate fixed for regular deputies. *Farrell v. Yellowstone County*, 68 Mont. 313, 218 Pac. 559.

4880. Maximum number of deputy treasurer, auditors and county attorneys.

Cited in *State v. Crouch*, 70 Mont. 551, 553, 227 Pac. 818.

4884.1. Mileage of public officers when using private automobile. Whenever it shall be necessary for any state or county officer to use his own automobile in the performance of any official duty where traveling expense is allowed by law, such officer shall receive not to exceed twelve and one-half cents per mile for each mile necessarily traveled unless otherwise specifically provided by law and the members of any lawful approving board shall be liable upon their official bonds, for any claim which they may allow in excess of such amount. Provided, further, that in no case shall an automobile be used as herein provided if suitable transportation can be had by railroad.

En. Sec. 1, Ch. 80, L. 1923.

4886. Fees for board of prisoners.

This section, limiting the fees of the sheriff for the board of prisoners to fifty cents per day for each prisoner, has reference to prisoners confined by state

authority and not to federal prisoners. *Majors v. County of Lewis and Clark*, 60 Mont. 608, 201 Pac. 268.

4887. Fees must be paid into county treasury, when.

Cited in *Crow Creek Irr. Dist. v. Crittenden*, 71 Mont. 66, 68, 227 Pac. 63; as section 3139, Revised Codes, in *State ex*

rel. Bullock v. District Court, 62 Mont. 600, 601, 205 Pac. 955.

4893. No fees to be charged state, county or public officer.

An irrigation district created under sections 7166-7173 is a public corporation exercising essential governmental functions, one of which is the right to levy taxes, organized for the government of a portion of the state and for the promotion of the public welfare, and as such must be deemed a subdivision of the

state within the meaning of this section, relieving it, as such subdivision, from the payment of fees for the recordation of papers in the county clerk and recorder's office. *Crow Creek Irr. Dist. v. Crittenden*, 71 Mont. 66, 227 Pac. 63.

Cited in *Thaanum v. Bynum Irr. Dist.*, 72 Mont. 221, 225, 232 Pac. 528.

4903. Certificate of clerk to witness.

Cited in *Helena Adjustment Co. v. Clafin*, 75 Mont. 317, 326, 243 Pac. 1063.

4916. Fees of sheriff. For service of summons and complaint on each defendant, besides mileage, one dollar.

For levying and serving each writ of attachment or execution on real or personal property, besides mileage, one dollar.

For service of attachment on the body or order of arrest on each defendant, besides mileage, one dollar.

For service of affidavit, order, and undertaking in claim and delivery, besides mileage, one dollar.

For serving subpoena for each witness summoned, besides mileage, thirty cents.

For serving writ of possession or restitution, two dollars.

For trial of the right of property or damages, including all services except mileage, three dollars.

For taking bond or undertaking in any case authorized by law, one dollar.

For serving every notice, rule, or order, besides mileage, on each person, one dollar.

For copy of any writ, process, or other paper, when demanded or required by law, for each folio, twenty cents.

For advertising any property for sale on execution, or under any judgment or order of sale, exclusive of the cost of publication, one dollar.

For the expense in taking and keeping possession of and preserving property under attachment, execution, or other process, such sum as the court or judge may order, not to exceed the actual expenses incurred, and no keeper must receive to exceed three dollars per day, and no keeper must be employed without an order of court, nor must be so employed unless the property is of such character as to need the personal attention and supervision of a keeper. No property must be placed in charge of a keeper if it can be safely and securely stored, or where there is no reasonable danger of loss.

For each mile actually traveled in serving every writ, process, order, or other paper, going and coming, ten cents per mile, when such travel is made by railroad, and in all cases wherein travel is made other than by railroad twelve and one-half cents per mile going, and twelve and one-half cents per mile returning.

But no mileage must be allowed on an attachment, order of arrest, order for the delivery of personal property, or any other order, notice, or paper, when the same accompanies the summons, and the service thereof may be made at the time of the service of the summons, unless

for the distance actually traveled beyond that required to serve the summons.

When two papers are served on the same person at the same time, but one mileage must be charged.

In the service of subpoenas, but one mileage must be charged when the persons named in the subpoena live in the same place or in the same direction, but mileage may be charged for the longest distance actually traveled.

Any writ or other paper for service must be received at any place in the county where a sheriff or a deputy is found, and mileage must be computed from such place. If papers are delivered for service away from the county seat, a copy or copies thereof must be furnished for service.

For actual expenses in conveying a person, when under arrest, before a magistrate or to jail, or on habeas corpus, which must be allowed by the board of county commissioners.

Amd. Sec. 1, Ch. 111, L. 1927.

4936. Witnesses' Fees.

Cited in *Helena Adjustment Co. v. Claffin*, 75 Mont. 317, 326, 243 Pac. 1063.

4944. Witnesses may demand advance fees when. No witness shall be obliged to attend court, or before a referee, or any officer authorized to take depositions, or commissioner, when subpoenaed, unless his mileage and fees for one day's attendance are tendered or paid to him on his demanding the same, nor unless his fees for attendance thereafter for each day are tendered or paid to him on demand. The fees of witnesses paid may be taxed as costs against the losing party.

Amd. Sec. 1, Ch. 71, L. 1927.

CHAPTER 36.

OTHER COUNTY CHARGES.

4952. Enumeration of county charges.

A county attorney of a county of the third class had power to bind the county for services of a stenographer employed by the day if such services were necessary to the proper discharge of the duties of his office; and in the absence of a showing that they were unnecessary, the

district court properly directed the board of county commissioners to pay the claim, under this section, providing that contingent expenses necessarily incurred for the use and benefit of the county are county charges. In *re Claims of Hyde*, 73 Mont. 363, 236 Pac. 248.

CHAPTER 37.

GENERAL POWERS OF CITIES AND TOWNS.

4955. General Powers.

Cited in *State ex rel. McLeod v. District Court*, 67 Mont. 164, 168, 215 Pac. 240.

For text treatment of this subject see vol. 18 Cal. Jur. 693.

CHAPTER 40.

ADDITIONS TO CITIES AND TOWNS.

4978. (1) Cities or towns of the first class. Any tracts or parcels of land, which have been or may hereafter be platted into lots or blocks, streets, and alleys, and the map or plat thereof filed in the office of the county clerk and recorder of the county in which the same are situated, and which shall be contiguous to any incorporated city of the first class, may be embraced within the corporate limits thereof, and the boundaries of such city of the first class extended so as to include the same in the following manner: When, in the judgment of any city council of a city of the first class, expressed by resolution duly and regularly passed and adopted, it will be to the best interest of such city and the inhabitants thereof, and of the inhabitants of any contiguous platted tracts or parcels of land, as aforesaid, that the boundaries of such city shall be extended, so as to include the same within the corporate limits thereof, the city clerk of such city shall forthwith cause to be published in the newspaper published nearest such platted tracts or parcels of land, at least once a week for two successive weeks, a notice which shall be to the effect that such resolution has been duly and regularly passed, and that for a period of twenty days after the first publication of such notice, such city clerk will receive expressions of approval or disapproval, in writing, of the proposed extensions of the boundaries of such city of the first class, from resident freeholders of the territory proposed to be embraced therein. The clerk shall, at the next regular meeting of the city council of such city of the first class after the expiration of said twenty days, lay before the same all communications in writing by him so received for its consideration, and if, after considering the same, such council shall duly and regularly pass and adopt a resolution to that effect, the boundaries of such city of the first class shall be extended so as to embrace and include such platted tracts or parcels of land, the time when the same shall go into effect to be fixed by such resolution; provided, that such resolution shall not be adopted by such council if disapproved, in writing, by a majority of the resident freeholders of the territory proposed to be embraced.

(2) Cities and towns of the second and third class. Any tracts or parcels of land, which shall be contiguous to any incorporated cities or towns of the second and third class, may be embraced within the corporate limits thereof and the boundaries of such cities or towns of the second and third class extended so as to include the same in the following manner: When, in the judgment of any such city or town council, expressed by resolution duly and regularly passed and adopted, it will be to the best interest of such city or town and the inhabitants thereof, and of the inhabitants of any contiguous tracts or parcels of land, as aforesaid, that the boundaries of such city or town shall be extended, so as to include the same within the corporate limits thereof, the city or town clerk of such city or town shall forthwith notify in writing all property holders within the boundaries of the territory proposed to be embraced, and cause to be published in the newspaper published nearest such tracts or parcels of land, at least once a week for two successive

weeks, a notice which shall be to the effect that such resolution has been duly and regularly passed and that for a period of twenty days after the first publication of such notice, such city or town clerk will receive expressions of approval or disapproval, in writing, of the proposed extensions of the boundaries of such city or town, from freeholders of the territory proposed to be embraced therein. The clerk shall, at the next regular meeting of the city or town council after the expiration of said twenty days, lay before the same all communications in writing by him so received for its consideration, and if, after considering the same, such council shall duly and regularly pass and adopt a resolution to that effect, the boundaries of such city or town of the second or third class, shall be extended so as to embrace and include such tracts or parcels of land, the time when the same shall go into effect to be fixed by such resolution; provided, that such resolution shall not be adopted by such council, if disapproved, in writing, by a majority of the freeholders of the territory proposed to be embraced.

(3) Whenever two or more adjacent tracts taken as a whole shall adjoin the city, they may be included in one resolution under section 2 hereof, although one or more of said tracts taken alone may not be adjacent to the corporate limits as then existing.

Amd. Sec. 1, Ch. 52, L. 1925.

4979.1. City boundaries, how altered—Exclusion of territory. The boundaries of any incorporated city or town of this state may be altered and a portion of the territory thereof excluded therefrom, and the councils of such cities and towns are hereby granted power to enact resolutions for that purpose after proceedings had as required in this act.

En. Sec. 1, Ch. 33, L. 1927.

4979.2. Petition for exclusion—Notice—Action. A petition in writing signed by a number of the qualified electors residing within the corporate limits of such city or town, equal to a majority of the votes cast at the last city election held therein, or by the owners of not less than three-fourths in value of the territory sought to be excluded, shall be filed with the clerk of such city or town. Such petition shall set out and describe the territory to be excluded from the corporate limits, which territory must be on the border of such city or town, and the alteration of the boundaries desired by the petitioners, together with the boundaries of the city or town as it will exist after such change is made, and shall pray that the council of such city or town shall enact a resolution altering the boundaries of such city or town and excluding therefrom the territory therein described. Such petition shall be presented to the council of such city or town at the next regular meeting after the filing thereof. If said council by resolution, duly and regularly passed and adopted, shall find that said petition is signed by the requisite number of qualified electors of said city or town, or by the owners of not less than three-fourths in value of the territory to be excluded, and that the territory petitioned to be excluded is within the corporate limits and on the border thereof, and that the granting of said petition will be to the best interest of such city or town and the inhabitants thereof,

and will not materially mar the symmetry of such city or town, the city or town clerk of such city or town shall forthwith cause to be published in the newspaper nearest such territory petitioned to be excluded, at least once a week for two successive weeks, a notice which shall be to the effect that such resolution has been duly and regularly passed and that for a period of twenty days after the first publication of such notice, such city or town clerk will receive expressions of approval or disapproval, in writing, of the proposed alterations of the boundaries of such city or town by the exclusion of the territory petitioned to be excluded, from the owners of the territory proposed to be excluded. The clerk shall, at the next regular meeting of the city or town council, after expiration of the said twenty days, lay before the same all communications in writing by him so received for its consideration, and if, after considering the same, such council shall duly and regularly pass and adopt a resolution to that effect, the boundaries of such city or town shall be altered so as to exclude the territory described in said petition; provided, that such resolution shall not be finally adopted by such council after written disapproval by a majority of the owners in value of the territory proposed to be excluded, nor after written disapproval or protest by a majority of the owners in value of property within the corporate limits of said city or town immediately adjacent and contiguous to the territory sought to be excluded. That for the purposes of this act the words "contiguous" and "adjacent" shall include property on the opposite side of a street or alley from the property sought to be withdrawn.

En. Sec. 2, Ch. 33, L. 1927.

4979.3. Filing of resolution and map. Within thirty days after the passage and approval of said resolution, a copy thereof duly certified by the clerk of said city or town, together with a map showing the corporate limits of said city or town as altered and changed, shall be filed in the office of the county clerk and recorder of the county in which said city or town is located. Said resolution shall become effective thirty days after its passage and approval, and thereafter the boundary of said city or town shall be as set forth in said resolution.

En. Sec. 3, Ch. 33, L. 1927.

4979.4. Liability of excluded territory. Such alteration shall not relieve any territory excluded from the limits of a city of [or] town, from its liability on account of any outstanding bonded indebtedness of such city or town, or any indebtedness of any improvement district of which the excluded territory is a part, existing at the time of the passage of such resolution.

En. Sec. 4, Ch. 33, L. 1927.

4979.5. Jurisdiction for taxation retained. For the purpose of levying any tax or assessment necessary for the collection of any of the indebtedness specified in section 4 of this act, the territory so excluded shall be and remain under the jurisdiction of such city or town.

En. Sec. 5, Ch. 33, L. 1927.

CHAPTER 42.

OFFICERS AND ELECTIONS.

5007. Who eligible.

Cited in State ex rel. Shea v. Cocking et al., 66 Mont. 169, 173, 28 A. L. R. 772, 213 Pac. 594.

5010. Qualifications of electors.

Cited in State ex rel. Shea v. Cocking et al., 66 Mont. 169, 173, 28 A. L. R. 772, 213 Pac. 594.

5015. Vacancies—How filled.

Cited as section 3236, Revised Codes, in State ex rel. Houston v. District Court, 61 Mont. 558, 566, 202 Pac. 756.

CHAPTER 43.

EXECUTIVE POWERS—STATEMENT OF CITY CLERK.

5030. Powers of mayor.

Cited in State ex rel. Morgan v. Knight, 76 Mont. 71, 78, 245 Pac. 267.

5033.1. Financial statement of city clerk. Within sixty (60) days after the close of each fiscal year the city or town clerk of each city and town in this state must make out, in triplicate, a full and complete statement of the financial condition of the city or town for such fiscal year, showing:

1. The indebtedness of the city or town, funded and floating; the amount of each class of indebtedness; and the amount of money in the treasury subject to the payment of each class of indebtedness;

2. The amount of money received from taxes upon real and personal property;

3. The amount of money received from fines, penalties and forfeitures;

4. The amount of money received from licenses;

5. The amount of money received from all other sources, each source and the amount received therefrom being shown separately;

6. For each fund the amount of money, if any, on hand at the beginning of such fiscal year, the amount received by and the amount paid out during such fiscal year. The total amount of money paid out must be deducted from the sum of money on hand at the beginning of the fiscal year and money received during such year by the city or town treasurer, and a balance must be struck for each fund;

7. A concise description of all property owned by the city or town with an approximate estimate of the value thereof;

8. The rates of taxation and purposes for which levied for such fiscal year;

9. Such other information as may be, from time to time, required by the state examiner.

The forms on which such statements shall be made shall be prescribed by the state examiner.

The city or town clerk must, not later than the 31st day of August following the close of each fiscal year, transmit one copy of such statement to the state examiner and one copy thereof to the state board of equalization, and must present the third copy thereof to the city or town council, or commission, at the first regular meeting thereof in the month of September.

The city or town clerk shall not receive any salary or compensation for the month of August, or for any month thereafter, until he shall have filed in his office receipts from the state examiner and state board of equalization that such copies have been received and filed.

En. Sec. 1, Ch. 24, L. 1927.

5034. Duties of city treasurer.

Under this section the city treasurer must deposit public moneys in such bank or banks as the city council shall designate, and under section 5036 he must take from the banks such security as the city council may prescribe, approve and deem fully sufficient to insure the safety of deposits made by him. A city treasurer complied with the foregoing provisions; the city council deemed a bond in the sum of \$15,000 sufficient to safeguard the deposits made by him though they exceeded at times the amount of the bond. At the time the designated city depository closed its doors its deposits did exceed the amount of the bond. Held, in a proceeding against the receiver of the insolvent bank to have the excess de-

clared a preferred claim on the ground that it had been unlawfully deposited with the knowledge of the bank and therefore it became a trust fund, that, the treasurer having complied with the statutory requirements, the city must be deemed to have consented to the deposits as made, that they were legally made and that therefore they were general in character and hence that the city was not entitled to a preference. *City of Missoula v. Dick et al.*, 76 Mont. 502, 248 Pac. 193.

Cited as section 3257, Revised Codes, as amended in State ex rel. *City of Cut Bank v. McNamer*, 62 Mont. 490, 496, 205 Pac. 951.

5036. Security for deposits, how given—Statements of banks.

Rep. Sec. 2, Ch. 89, L. 1923.

In the absence of fraud, bad faith or abuse of discretion on the part of a city council in fixing the amount of security exacted from a city depository to safeguard city deposits made by the treasurer as provided by this section which does not designate what relation the security shall bear to the deposits made and under which it may prescribe security

either less than or in excess of the amount of the deposits, courts cannot interfere even though, by not requiring security in excess of deposits, the city may sustain loss by failure of the depository; the province of courts being to apply the law as they find it and not to make new laws. *City of Missoula v. Dick et al.*, 76 Mont. 502, 248 Pac. 193.

5038. Qualifications, term of office and duties of city attorney.

The statute creating the office of city attorney did not provide a time for the commencement of the office, the length of the term, however, being fixed at two years, its commencement being fixed at the first appointment. Upon the death of an incumbent the then mayor appointed his successor to fill the vacancy thus oc-

casioned. Held, under the above rules, that the beginning and ending of the term of office having become established by operation of law, the appointee could hold only for the unexpired term for which he was appointed. *State ex rel. Morgan v. Knight*, 76 Mont. 71, 245 Pac. 267.

CHAPTER 44.

LEGISLATIVE POWERS—GENERAL AND SPECIAL POWERS OF CITY AND TOWN COUNCILS.

5039. Powers of city councils. The city or town council has power:

1. To make and pass all by-laws, ordinances, orders, and resolutions, not repugnant to the constitution of the United States or of the state

of Montana, or of the provisions of this title, necessary for the government or management of the affairs of a city or town, for the execution of the powers vested in the body corporate, and for carrying into effect the provisions of this title.

2. To levy and collect taxes for general and special purposes on all property within the town or city subject to taxation under the laws of the state.

3. To license all industries, pursuits, professions, and occupations, and to impose penalties for failure to comply with such license requirements.

4. To fix the amount, terms and manner of issuing and revoking licenses; but the council may refuse to issue licenses when it may deem it best for the public interests.

5. To build or hire all necessary buildings for the use of the city or town, and to heat and light the same.

6. To lay out, establish, open, alter, widen, extend, grade, pave, or otherwise improve streets, alleys, avenues, sidewalks, parks, and public grounds and vacate the same.

7. To provide for lighting and cleaning the streets, alleys, and avenues; to regulate the use of sidewalks, and to require the owners of the premises adjoining to keep the same free from snow or other obstruction; to regulate the disposition and removal of ashes, garbage, or other offensive matter in any street, alley, or on public grounds or on any premises, and to provide for levying the cost of such removal as a special tax against the property from which such matter was deposited.

8. To provide for and regulate street crossings, curbs, and gutters; to regulate and prevent the use or obstruction of streets, sidewalks, and public grounds by signs, poles, wires, posting handbills or advertisements, or any obstruction.

9. To regulate and prohibit traffic and sales upon the streets, sidewalks, and public grounds.

10. To regulate or prohibit the fast driving of horses, animals, or vehicles within the city or town.

11. To regulate and control the laying of railroad tracks, and prohibit the use of engines and locomotives propelled by steam or otherwise, or to regulate the speed thereof when used.

12. To require the lighting of any railroad track or route within a city or town, the cars of which are propelled by steam or otherwise, and fix and determine the number, style, and size of lamp-posts, burners, lamps and all other fixtures and apparatus necessary for such lighting, and the points of location of the lamp-posts, and to require the construction of crossings on the line of any railroad track or route within the city or town, the cars of which are propelled by steam or otherwise, where the said track intersects or crosses any street, alley, or public highway, or runs along the same, and to fix and determine the size and kind of such crossing and the grades thereof; and, in case the owner of such railroads fails to comply with such requirements, the council may cause the same to be done, and it may assess the expense thereof against such owner, and the same constitutes a lien on any property

belonging to such owner within such city or town, and may be collected as other taxes.

13. To license and authorize the construction and operation of street railroads, and require them to conform to the grade of the street as the same are or may be established.

14. To regulate the numbering of houses and lots, and to change the same.

15. To provide for the cleaning of waters, watercourses, and streams within the city, or to alter, straighten, or widen the same, and the draining and filling in of ponds, wells, or shafts on private property, when necessary to the public health or public welfare.

16. To license, tax, and regulate auctioneers, peddlers, pawnbrokers, second-hand and junk shops, drivers, porters, pool-halls and soft-drink parlors, billiard-tables, tenpin-alleys, shooting-galleries, shows, circuses, street parades, theatrical performances, and places of amusements within the city or town; provided, that the power to license, tax, and regulate circuses and shows of like character shall extend three miles beyond the limits of the city or town.

17. To require the owners and keepers of pawn, second-hand, and junk shops to keep a record of all articles purchased or pawned to them, which record, and the articles purchased or pawned, are subject to the inspection of all police officers of the city or town.

18. To prevent the keepers of pawn, second-hand, and junk shops from the purchasing of any article from a minor, without the written consent of the parent or guardian of such minor.

19. To regulate or prohibit dance-houses within the city or town limits, and within three miles thereof.

20. To suppress and punish all fraudulent devices and practices for the purpose of obtaining money or property, and to prohibit the same or exhibition of immoral publications, prints, pictures or illustrations.

21. To establish markets and market houses, and provide for the supervision and use thereof.

22. To provide for and regulate the inspection of beef, pork, flour, meal, and all provisions, oils; to regulate the inspection of milk, water, butter, lard, and other provisions; to regulate the vending of meat, poultry, fish, game, and vegetables; to restrain and punish the forestalling of provisions.

23. To regulate the inspection, weighing, and measuring of wood, coal, stone, corn, or other grain, and hay, within the city or town.

24. To regulate the construction, use, and repair of vaults, cisterns, hydrants, pumps, sewers, and gutters.

25. To prevent and punish intoxication, fights, riots, loud noises, disorderly conduct, obscenity, and acts or conduct calculated to disturb the public peace, or which are offensive to public morals, within the city or town, and within three miles of the limits thereof.

26. For the purpose of guarding against fire, to prescribe the limits within which wooden or combustible buildings must not be erected, placed, or repaired, and to establish fire limits within the city or town.

27. To establish a fire department, and prescribe and regulate its duties; to maintain a fire-alarm and police telegraph.

28. To erect engine, hose, and hook-and-ladder houses, and provide engines and other implements for the extinguishment of fire.

29. To inspect chimneys, flues, fireplaces, stove-pipes, ruins, structures, and boilers, and, when dangerous, to require the same to be removed or put in order, and prohibit the use thereof until safe.

30. To regulate and prevent the storage or handling of gunpowder, giant powder, nitroglycerine, or other inflammable explosives or materials, tar, pitch, kerosene, oils, and turpentine, and to prohibit the storage of the same within three miles of the city limits.

31. To regulate or prohibit the building of bonfires, the explosion, use or selling of fireworks, firecrackers, torpedoes, or other pyrotechnics or toy pistols or guns within the city or town.

32. To prohibit and punish cruelty to animals.

33. To define and abate nuisances, and to impose fines upon persons guilty of creating, continuing, or suffering a nuisance to exist on the premises which they occupy or control.

34. To define vagrancy, and to restrain and punish vagrants, mendicants, and persons guilty of disorderly conduct.

35. To establish and maintain a jail for the confinement of persons convicted of violating the ordinances of the city or town; to make rules for the government of the same, and to cause the prisoners to work on streets or elsewhere within three miles of the city.

36. To regulate, restrain, or prohibit the running at large of horses, cattle, swine, sheep, goats, and dogs, or other animals, and to authorize the impounding and sale thereof, if found at large contrary to ordinances.

37. To license the keeping of dogs, and to provide for the killing or destruction thereof, if found running at large without license.

38. To prevent the encumbering of streets, sidewalks, alleys, or public grounds with carriages, wagons, lumber, firewood, or other obstacles or materials.

39. To prevent the riding or driving of animals, or the drawing or riding of vehicles of any kind on the sidewalks of the city, or the doing damage in any way to the sidewalks.

40. To prevent horse-racing, or immoderate driving or riding in the streets of the city or town, and to regulate and provide for the hitching of all animals on the streets.

41. To regulate or prohibit coasting, skating, sliding, or tobogganning on the streets or alleys, or the indulgence in other amusements dangerous or annoying to the inhabitants, or having a tendency to frighten animals.

42. To regulate the location of slaughter-houses, breweries, distilleries, livery-stables, foundries, blacksmith-shops, planing-mills, soap factories, and tanneries within the city or town, and to prohibit any offensive and unwholesome establishments within the city or town limits, or within three miles thereof.

43. To regulate or suppress the erection of poles and the stringing of wires, rods, or cables, in the streets, alleys, or within the limits of any city or town.

44. To provide for a board of health, and to prescribe its powers and duties, and when such board of health is provided, for the same to have jurisdiction within the city or town limits, and within three miles thereof.

45. To establish at a suitable place, within or without the limits of the city or town, in case of necessity, a hospital to prevent the spread of smallpox, or other contagious or infectious diseases, and to regulate the control thereof, and do all other acts which may be necessary for the promotion of health, and to prevent the spread of infectious or contagious diseases within the city or town.

46. To establish and regulate cemeteries, within or without the city or town, and acquire lands for this purpose, and prohibit the establishment of cemeteries within three miles of the city or town.

47. To fix compensation, and to prescribe the duties of all officers and other employees of the city or town, subject to the limitations mentioned in this title.

48. To impose fines and penalties for the violation of any city ordinance, but no fine or penalty must exceed three hundred dollars, and no imprisonment must exceed ninety days for any one offense.

49. To levy and collect annually from each able-bodied male resident of the city or town, between the ages of twenty-one and forty-five years, a poll tax not exceeding three dollars per capita; and in case of failure or refusal of any person within the prescribed age to pay said tax, to provide by ordinance that the person failing or refusing must work one day on the public streets of the city.

50. To regulate partition fences and party-walls not already constructed.

51. To prescribe the thickness, strength, and manner of constructing stone, brick, and other buildings, and to order the construction of fire-escapes thereon.

52. To use the county jail for the confinement or punishment of offenders, subject to such conditions as are imposed by law, and with the consent of the board of county commissioners.

53. To erect and organize a workhouse in or near a city or town; and any person who fails or neglects to pay any fine or costs imposed on him by any ordinance may be committed to the workhouse until such fine is paid.

54. To license and regulate automobiles, trucks, hackney carriages, carts, omnibuses, wagons, and drays, and to fix the rate to be charged for the carriage of persons and property within the city or town, and to the public works and property without the limits of the city or town,

55. To regulate, restrain, or prevent the carrying on of manufactories dangerous in causing or producing fires, and to prevent and suppress the sale of firearms, and carrying of concealed weapons.

56. To establish standard weights and measures to be used in the city or town, and to provide for a sealer of standard weights and measures, who had jurisdiction within the city or town.

57. To provide for the insecting and measuring of lumber and other building materials.

58. To make regulations authorizing the police of the city or town to make arrests of persons charged with crime, within the limits of the city or town and within five miles thereof, and along the line of water supply of the city or town.

59. To provide for the planting of trees and the protection of the same.

60. To require from an officer at any time a report in detail of the transactions in his office, or any matter connected therewith.

61. To regulate the sales of poisons, and to punish any person for selling or using opium, or any preparation thereof, or having the same or any implement to be used in smoking it in his possession, or for keeping, maintaining, visiting, or contributing to the support of a room or place where the same is smoked or used. Druggists may sell opium or any preparation thereof, subject to the general laws of the state in relation thereto.

62. To sell, dispose of, or lease any property belonging to a city or town not held in trust for a specific purpose, and such transfer must be made by ordinance or resolution passed by a two-thirds vote of all the members of the council. To sell, dispose of, or lease any property belonging to a city or town not held in trust for a specific purpose, and such transfer must be made by ordinance or resolution passed by a two-thirds vote of all the members of the council, provided, however, that when it is for the best interest of the city or town and the residents thereof that any municipal lighting system or power plant, owned by the municipality and held in trust for a specific purpose, be sold or disposed of, the city council shall have power to fix and determine and declare the value thereof and to sell, lease and dispose of the same, such sale, lease or disposal to be approved by a majority vote of taxpayers of such municipality cast at an election called for that purpose.

63. To make any and all contracts necessary to carry into effect the powers granted by this title, and to provide for the manner of executing the same.

64. To contract an indebtedness on behalf of a city or town, upon the credit thereof, by borrowing money or issuing bonds for the following purposes, to wit: Erection of public buildings, construction of sewers, bridges, waterworks, lighting plants, supplying the city or town with water by contract, the purchase of fire apparatus, the construction or purchase of canals or ditches and water rights for supplying the city or town with water, and the funding of outstanding warrants and maturing bonds; provided, that the total amount of indebtedness authorized to be contracted in any form, including the then existing indebtedness, must not, at any time, exceed three per centum of the total assessed valuation of the taxable property of the city or town, as ascertained by the last assessment for state and county taxes; provided, that no money must be borrowed on bonds issued for the construction, purchase, or securing of a water plant, water system, water supply, or sewerage system, until the proposition has been submitted to the vote of the taxpayers affected thereby of the city or town, and the majority vote cast in favor thereof; and, further provided, that an additional indebtedness shall be incurred, when necessary, to construct a sewerage system or procure a water supply for the said city or town, which shall own or control said water supply and devote the revenue derived therefrom to the payment of the debt. The additional indebtedness authorized, including all indebtedness heretofore contracted, which is unpaid or outstanding, for the construction of a sewerage system, shall not exceed ten per centum over and above the three per centum heretofore referred

to, of the total assessed valuation of the taxable property of the city or town as ascertained by the last assessment for state and county taxes; and, provided further, that the above limit of three per centum shall not be extended, unless the question shall have been submitted to a vote of the taxpayers affected thereby, and carried in the affirmative by a vote of the majority of said taxpayers who vote at such election. It is further provided, that whenever a franchise has been granted to, or a contract made with, any person or persons, corporation or corporations, and such person or persons, corporation or corporations, in pursuance thereof, or otherwise, have established or maintained a system of water supply, or have valuable water rights or a supply of water desired by the city or town for supplying the said city or town with water, the city or town granting such franchise or entering in such contract or desiring such water supply, shall, by the passage of an ordinance, give notice to such person or persons, corporation or corporations, that it desires to purchase the plant and franchise and water supply of such person or persons, corporation or corporations, and it shall have the right to so purchase the said plant or water supply, upon such terms as the parties agree; in case they cannot agree, then the city or town shall proceed to acquire the same under the laws relating to the taking of private property for public use, and any city or town acquiring property under the laws relating to the taking of private property for public use, shall make payment to the owner or owners of the plant or water supply of the value thereof legally determined, within six months from and after final judgment is entered in the condemnation proceedings. For the purpose of providing the city or town with an adequate water supply for municipal and domestic purposes, the city or town council shall procure and appropriate water rights and title to the same, and the necessary real and personal property to make said rights and supply available, by purchase, appropriation, location, condemnation, or otherwise. Cities and towns shall have jurisdiction and control over the territory occupied by their public works, and over and along the line of reservoirs, streams, trenches, pipes, drains, and other appurtenances used in the construction and operation of such works, and also over the source of stream for which water is taken, for the enforcement of its sanitary ordinances, the abatement of nuisances, and the general preservation of the purity of its water supply, with power to enact all ordinances and regulations necessary to carry the powers hereby conferred into effect. For this purpose the city or town shall be authorized to condemn private property in the manner provided by law, and shall have authority to levy a just and equitable tax on all consumers of water for the purpose of defraying the expenses of its procurement.

65. To regulate and provide for the construction or repair of sidewalks and foot pavements, and if the owner of any lot fails to comply with the provisions of the ordinance within such time as may be prescribed thereby, the council may contract for the construction and repair of such sidewalks or pavements, and the city or town may pay for the same, and the amount so paid is a lien upon the lot, and may be enforced or the amount may be recovered against the owner by a suit before any court of competent jurisdiction.

66. To grant the right of way through the streets, avenues, and other property of a city or town for the purpose of street or other railroads, and to regulate the running and management of the same, and compel the owner of such street or other railroads to keep the street in repair when occupied by such street or other railroad; to regulate the speed of railroad engines, and to require railroad companies to station flagmen at street crossings.

67. To compel the owner of a building to erect fire-escapes and proper exits and entrances when necessary for safety.

68. To establish the grade of any street, alley, or avenue, and when the grade has been established, it must not be changed except by a vote of the majority of the council, and not then until the damage to property owners, caused by the change of grade, has been assessed and determined by three disinterested appraisers who must be appointed by the mayor and confirmed by the council, who must make an appraisal, taking into consideration the benefits, if any, to the property, and file their report with the clerk within ten days after receiving notice of their appointment, and the amount of damages so assessed must be tendered to the owner or his agent before any change of grade is made.

69. To provide for the sprinkling of the streets, alleys, and public places of the city or town, and to fix the rates to defray the cost of said work.

70. To regulate the location of steam boilers, the putting up of signs and awnings, and the construction of entrances to basements, cellars, and other floors to buildings from the sidewalks.

71. To prevent and prohibit prize-fights, boxing matches of any kind, with or without gloves, or exhibition of prize-fighters, boxers, or sluggers in the city or town, or within five miles thereof.

72. To require the owner of a sidewalk, house, or other structure which is dangerous to passers-by, to repair or remove the same after notice.

73. To permit the use of the streets and alleys of the city or town for the purpose of laying down gas, water, and other mains, but no excavations must be made for such purpose without the permission of the council or its authorized officer; and the streets and alleys must be placed in as good condition by the person or corporation making the excavation, as they were before the excavation was made, and the mains laid down, and in default thereof the council may order the same to be done at the expense of such person or corporation.

74. To provide for inclosing, improving, and regulating all public grounds belonging to the city or town.

75. To condemn private property for opening, establishing, widening, or altering any streets, alley, park, sewer, waterway, in the city or town, or for any other public use, and the ordinance authorizing the taking of private property for any such use is conclusive as to the necessity of the taking, and must conform to and the proceedings thereunder had as provided in the Code of Civil Procedure concerning eminent domain.

76. To appropriate money, and provide for the payment of the debt and expenses of the city or town, and also the debt of the municipal corporation of which it is the successor.

77. To take a census of the inhabitants of a city or town at any time.

78. To provide for the city or town printing, the contract for which must be let annually to the lowest bidder.

79. To adopt, enter into, and carry out means for securing a supply of water for the use of a city or town or its inhabitants.

80. To create special improvement districts, designating the same by number; to extend the time for payment of assessments levied upon such districts for the improvements thereon for a period not exceeding twenty years; to make such assessments payable in installments, and to pay all expenses of whatever character incurred in making such improvements with special improvement warrants, which warrants shall bear interest at a rate not to exceed six per centum per annum.

81. To regulate and prohibit the wearing of hats or bonnets at theaters or public places of amusement.

82. To regulate the use and construction of irrigating ditches, drains, and flumes within or running through any city or town.

83. To declare and determine what vegetation within the city or town shall be noxious weeds, and to provide the manner in which they shall be exterminated, and to require the owner or owners of any property, within said city or town, to exterminate or remove noxious weeds from their premises, and the one-half of any road or street lying next to the lands or boulevard abutting thereon, and to provide, in the event the owner or owners of any of said premises neglect to exterminate or remove the noxious weeds therefrom, for levying the cost of such extermination or removal as a special tax against the property.

84. To acquire, by gift, purchase or condemnation, lands for landing fields for aircraft within or without the corporate limits of the municipality, and to exercise municipal jurisdiction over the land so acquired where such lands, or any portion thereof, are without the corporate limits of the municipality, to the same extent as though they were within such corporate limits.

Amd. Sec. 1, Ch. 115, L. 1925; Amd. Sec. 1, Ch. 20, L. 1927.

For discussion of authority of cities to impose license tax under the police power, reasonableness of license schedules, etc., see *City of Bozeman v. Nelson*, 73 Mont. 147, 237 Pac. 528.

By the general repealing clause found in chapter 96, L. 1923, subdivision 2, of section 5039 and section 5203, Revised Codes of 1921, general in their nature, giving authority to cities to levy and collect taxes, as well as the ordinances enacted in pursuance thereof, were repealed. *Thomas v. City of Missoula et al.*, 70 Mont. 478, 226 Pac. 213.

Section 5039 provides that the license fee which a city may impose upon industries and businesses must not exceed the sum required by statute when the state requires a license therefor. Chapter 154, L. 1923, while authorizing the state railroad commission to require the payment of a license not to exceed \$10 per motor vehicle, does not declare that a license

shall be exacted. A city imposed a license fee of \$25 for the first taxi operated for hire and \$12 for each additional one. Held, that in the absence of a showing that the railroad commission had exercised the power given it by chapter 154, the fee exacted by the city cannot be said to exceed the fee imposed by the state for the same purpose. *State ex rel. City of Bozeman v. Police Court*, 68 Mont. 435, 219 Pac. 810.

While subdivision 7 of this section gives a city the power to regulate the removal and deposition of garbage, it does not give it the right to so deposit it as to create a condition injurious to health or offensive to the senses and thus interfere with the comfortable enjoyment of life and property. *Lennon et al. v. City of Butte*, 67 Mont. 101, 214 Pac. 1101.

A city ordinance exacting a license fee from coal dealers under the provisions of section 2328, without incorporating therein a clause limiting the payment of

the five cents per ton to coal upon which the mine license fee exacted by section 2317 had not been paid to the state, was invalid as in excess of the power of the city to impose. State ex rel. City of Butte v. Police Court, 65 Mont. 94, 210 Pac. 1059.

An assessment levied in 1908 to pay for the expense incurred by the city in the construction of a sidewalk, without first giving the owner of the abutting property notice and affording him an opportunity to construct it himself, as required by the statute and an ordinance of the city then in force, was invalid and

constituted no lien on the property. Murray et al. v. City of Helena et al., 65 Mont. 485, 211 Pac. 197.

Cited in Griffith v. City of Butte et al., 72 Mont. 552, 562, 234 Pac. 829; State ex rel. McLeod v. District Court, 67 Mont. 164, 169, 215 Pac. 240; City of Helena v. Helena Light & Ry. Co., 63 Mont. 108, 119, 207 Pac. 337; as section 3259, Revised Codes, in Stettheimer et al. v. City of Butte, 60 Mont. 111, 116, 198 Pac. 455.

For text treatment of this subject see vol. 18 Cal. Jur. 905.

5039.1. Licensing soft-drink establishments and pool and billiard halls. In addition to the other powers vested in city governments the city or town council of any city or town shall have power to make and pass necessary ordinances providing for the licensing and regulation of soft-drink establishments and all pool and billiard halls; said city and town council shall have power to regulate and limit the number of such licenses issued and to provide by ordinance that the total number of such licenses may not exceed the number fixed by the city or town council by ordinance.

En. Sec. 1, Ch. 136, L. 1923.

5039.2. Municipalities authorized to furnish water to outside industries. The city or town council of any city or town within the state of Montana, that owns and operates a municipal water system, to furnish water to the inhabitants of such city or town, as a public utility, shall, in addition to all other powers, have power to furnish water from such water system, to any factory, or other industry, located within the corporate limits of such city or town, or to any factory or other industry located within three miles of the corporate limits of such city or town, at rates established for like use or service to the inhabitants or industries located inside the corporate limits of such city or town, provided, that delivery of water by any such city or town to or for the use of any factory or other industry located outside the corporate limits of such city or town shall be made within, or at the boundary line of the corporate limits of such city or town.

En. Sec. 1, Ch. 71, L. 1925.

5039.3. Issuance city bonds to acquire natural gas authorized. The city or town council has power to contract an indebtedness of a city or town upon the credit thereof by borrowing money or issuing bonds for the construction, purchase or development of an adequate supply of natural gas, and to construct or purchase a system of gas lines for the distribution thereof to the inhabitants of said city or town or vicinity; provided, that the total amount of indebtedness authorized to be contracted in any form, including the then existing indebtedness must not at any time exceed three per centum (3%) of the total assessed valuation of the taxable property of the city or town as ascertained by the last assessment for state and county taxes, and provided further, that no money must be borrowed or bonds issued for the purposes herein

specified until the proposition has been submitted to the vote of the taxpayers affected thereby of the city or town, and the majority vote cast in favor thereof.

En. Sec. 1, Ch. 128, L. 1927.

5043. Organized cities and towns authorized to take by gift, donation, devise, etc.

This section, conferring the right upon cities to accept by gift, deed or devise land for a public park, does not by implication clothe it with power to condemn land for a public road leading

thereto. State ex rel. McLeod v. District Court, 67 Mont. 164, 215 Pac. 240.

Sections 5043, 5044 were cited in Town of Cascade v. County of Cascade, 75 Mont. 304, 311, 312, 243 Pac. 806.

5044.1. Certain municipalities and institutions may receive gifts, etc. All counties, all school districts, and all public libraries, hospitals, cemeteries and other public institutions are hereby granted the power and authority to accept, receive, take, hold and possess any gift, donation, grant, devise or bequest of property, real or personal, and the right to own, hold, work and improve the same.

En. Sec. 1, Ch. 47, L. 1927.

5044.2. Other statutes applicable. The provisions of sections 5043 and 5044, R. C. M. 1921, are hereby made expressly applicable to gifts, donations, grants, devises and bequests of real or personal property to officers and boards of the public corporations and institutions mentioned in the preceding section of this act.

En. Sec. 2, Ch. 47, L. 1927.

5056. Ordinances—How prepared.

The restriction placed by this section upon the city council in enacting ordinances to the effect that none shall be passed containing more than one subject which shall be clearly expressed in its title, like that imposed upon the legislature in enacting a statute, must be liberally construed, and the ordinance will be sustained unless it appears beyond a reasonable doubt that it does not meet

the requirement. State v. Mayor of City of Butte, 69 Mont. 232, 221 Pac. 524.

An ordinance establishing a police department, repealing a series of ordinances dealing therewith, and those relating to the location and conduct of the city jail, held not open to the objection that it was void as in contravention of the provisions of this section. State v. Mayor of City of Butte, 69 Mont. 232, 221 Pac. 524.

CHAPTER 45.

MUNICIPAL CONTRACTS AND FRANCHISES.

5070. Awarding contracts. All contracts for work, or for supplies or material, for which must be paid a sum exceeding five hundred dollars (\$500), must be let to the lowest responsible bidder, under such regulations as the council may prescribe; provided, that no contract shall be let extending over a period of three years, or more, without first submitting the question to a vote of the resident taxpayers of said city or town.

Amd. Sec. 1, Ch. 22, L. 1927.

For text treatment of this subject see vol. 18 Cal. Jur. 1006.

CHAPTER 47.

LIABILITY OF CITIES AND TOWNS FOR NEGLIGENCE.

5086.1. Nonliability of cities for certain negligence. No city or town in this state shall be liable in damages for any negligence or mismanagement on its part, or any negligence or mismanagement on the part of any officer, agent, servant or employee of such city or town in causing, permitting or allowing snow or ice to be, remain or accumulate on or in any road, street, alley, sidewalk, crosswalk or gutter within said city or town.

En. Sec. 1, Ch. 45, L. 1923.

For text treatment of this subject see vol. 18 Cal. Jur. 1091.

CHAPTER 48.

JUDICIAL POWERS—POLICE COURTS.

5092. Proceedings in criminal actions.

Cited as section 3301, Revised Codes, in *City of Miles City v. Drum*, 60 Mont. 451, 457, 199 Pac. 719.

CHAPTER 49.

POLICE DEPARTMENT.

5095. Police department.

The Metropolitan Police Law, under which a worthy incumbent cannot be ousted because of favoritism or political changes in the city administration, does not prevent the city council from abolishing any of the subordinate offices when such course becomes necessary because of economic conditions or when the necessity which called the office into being ceases to exist. *State v. Mayor of City of Butte*, 69 Mont. 232, 221 Pac. 524.

This and the following sections of the Metropolitan Police Law were cited as sections 3304–3317, Revised Codes, in *State v. Dryburgh*, 62 Mont. 36, 46, 203 Pac. 508.

Cited in *Sweeney v. City of Butte*, 64 Mont. 230, 243, 208 Pac. 943.

For text treatment of this subject see vol. 18 Cal. Jur. 998.

5096.1. Age qualifications policemen. The members of the police department on the active list of any city at the time of their appointment under this act shall not be less than twenty-one (21) years of age, nor more than thirty-five (35) years of age, but this restriction shall not apply to any member of any present police department, nor to police reserves hereinafter provided for.

En. Sec. 1, Ch. 100, L. 1927.

5096.2. Period of service—Police reserve. Whenever any member of the police department in cities of the first and second class at the time of the taking effect of this act or thereafter shall have served for twenty-five (25) years or more in the aggregate as a member of such police department in any capacity or rank whatever; provided, a police officer serving in the United States army or navy, in time of war or national emergency shall be given credit upon his police record for such service in the same manner as though on active police duty for such time or shall have, while in active service reached the age of sixty-five

(65) years, he may with the consent of the city council, pass from the active list of police officers of such city or town and become a member of the police reserves of such city or town.

En. Sec. 2, Ch. 100, L. 1927.

5096.3. Retired list—Emergency call. Policemen or officers on the reserve list of any city or town of this state shall retire from the active list of police officers of such city or town but shall be subject to call for police service or active duty whenever an emergency shall require or the active list be temporarily insufficient for proper policing of such city or town, all under the rules and regulations as the board of police commissioners or city council shall prescribe.

En. Sec. 3, Ch. 100, L. 1927.

5096.4. Disability. Whenever any policeman or officer shall receive injuries or disabilities while on duty, or in active discharge of the duties of a police officer, and in line of duty, which injuries or disability shall, in the opinion of the board of police commissioners or city council of the city or town, to be of such character to impair his ability as an active police officer, or incapacitate him for the further discharge of his duties, as such, he shall become a member of the police reserves of such city or town in like manner as though he had arrived at the age of transfer to the reserve list of such department.

En. Sec. 4, Ch. 100, L. 1927.

5096.5. Salary. Whenever any policeman or officer shall from age or disability become transferred from the active list of the police officers of any city or town to the reserve list of such city or town, he shall thereafter be paid in monthly payments from the funds in this act provided for, a sum equal to one-half the salary he was receiving during the year prior to the time he passed to the police reserve list.

En. Sec. 5, Ch. 100, L. 1927.

5096.6. Salary and expenses during illness. Whenever any member of a police department in any city or town, shall on account of sickness or disability, suffered or sustained while a member of such police department, and not caused or brought on by dissipation or abuse, be confined to any hospital or his home, and shall require medical attention and care, the officer of such police department may be, by the city council, allowed his salary as such police officer during his absence, and an amount equal to his expenses while confined for such injury or sickness.

En. Sec. 6, Ch. 100, L. 1927.

5096.7. Tax levy for payment salaries. For the purpose of paying the salaries of policemen who have been placed upon the reserve list, the city or town council, or commissioners, shall in the manner provided for by law, and at the time of the levy of the annual tax, levy such special tax of not to exceed one-half ($\frac{1}{2}$) of one mill on the dollar upon the assessed valuation of all taxable property within the limits of said city or town, which said tax shall be collected as other taxes and

when so collected shall be used for the payment of salaries of police officers upon the reserve list.

En. Sec. 7, Ch. 100, L. 1927.

5096.8. Cities, how admitted. Cities other than those in the first and second class may come within the provisions of this act by duly passing an ordinance of their desire to come within the provisions of the act and making the tax levy herein provided for.

En. Sec. 8, Ch. 100, L. 1927.

5096.9. Deductions from monthly pay. The treasurer of any incorporated city which may be hereafter subject to the provisions of this act, shall retain from the monthly salary of all police officers upon the active list, a sum equal to one and one-half per centum ($1\frac{1}{2}\%$) of the monthly compensation paid each officer for his services as such police officer, the said monthly deduction from the salaries of such police officers, shall be paid into the fund created by the tax levy for the purpose of paying the salaries of police officers upon the reserve list.

En. Sec. 9, Ch. 100, L. 1927.

5096.10. Disposal of moneys withheld from salaries, gifts, etc. All moneys withheld from salaries of police officers for the violation of rules and regulations of such police departments, all bequests, gifts or emoluments paid or given on account of any extraordinary service of any member of such police department, except when specifically allowed to be retained by such officer by the mayor, commissioner['s] and chief of police, and all moneys derived from the provisions of this act, shall be placed in the fund created by the tax levy of taxable property and per centum of salaries withheld from such police officers.

En. Sec. 10, Ch. 100, L. 1927.

5097. Terms of members of police force—Appointments, how made. All appointments to the police force must be appointed by the mayor and confirmed by the city council, but no such appointment must be made, until an application for such position on the police force has been filed with the mayor, and by him referred to the police commission, where such commission exists, and such applicant has successfully passed the examination required to be held by such police commission, and a certificate from such police commission that the applicant has qualified for such appointment has been filed with the mayor. Every applicant who has passed such examination and received such certificate must first serve for a probationary term of not more than six months. At any time before the end of such probationary term, the mayor may revoke such appointment. After the end of such probationary period, and within thirty days thereafter, the appointment of such applicant must be submitted to the city council, and if such appointment is confirmed by the city council, such applicant becomes a member of the police force, and shall hold such position during good behavior, unless suspended or discharged as provided by law.

Amd. Sec. 2, Ch. 119, L. 1923.

5098. Police commissioner—Appointment—Term—Compensation. In cities of the first class the mayor shall nominate, and with the consent of the city council appoint three residents of such city, who shall have the qualifications required by law to hold a municipal office therein, and who shall constitute a board to be known by the name of "police commission" who shall hold office for three years, and that one such member must be appointed annually, at the first regular meeting of the city council in May of each year. Provided, that at the first meeting of the council in the month of May after the passage of this act, the mayor, subject to the approval of the council, shall appoint three members of such police commission, one to serve for one year, one for two years and one for three years from the date of their appointment and confirmation.

The compensation of the members of such board shall be fixed by the city council, not to exceed ten dollars per day, nor more than fifty dollars per month for any month for each member in cities of the first class.

The council of any town or city, other than a city of the first class, may provide by ordinance for such a police commission in any such city or town.

Amd. Sec. 1, Ch. 119, L. 1923.

5099. Examination of applicants for position on police force. All applicants for positions on the police force, whose application shall have been referred to the police commission, shall be required successfully to undergo an examination before the police commission, and to receive a certificate from said commission that the applicant is qualified for such appointment for the probationary period upon the police force.

It shall be the duty of the police commission to examine all such applicants as to their age, legal, mental, moral and physical qualifications, and their ability to fill the office as a member of the police force, it shall also be the duty of the police commission subject to the approval of the mayor, to make such rules and regulations regarding such examinations not inconsistent with this act or the laws of the state.

Any applicant who shall make any false statement to the police commission as to his age or other qualifications required, at his examination before the police commission, shall be subject to suspension or dismissal from the police force, after trial.

Amd. Sec. 3, Ch. 119, L. 1923.

This section provides that no action for the restoration of a police officer illegally removed from his office shall be maintained unless it is begun within sixty days from the date of the accrual of the cause of action. Plaintiff's complaint showed upon its face that the action had not been commenced until five months

after the accrual of the cause of action. Held, that judgment of dismissal was proper. *King v. Mayor of City of Butte*, 71 Mont. 309, 230 Pac. 62.

Cited in *Sweeney v. City of Butte*, 64 Mont. 230, 243, 208 Pac. 943.

Cited as section 3308, Revised Codes, in *State ex rel. Lease v. Wilkinson et al.*, 59 Mont. 327, 334, 196 Pac. 878.

5100. Presentation and trials of charges against policemen. The police commission shall have the jurisdiction, and it shall be its duty to hear, try and decide all charges brought by any person or persons against any member or officer of the police department, includ-

ing any charge that such member or officer is incompetent, or by age or disease, or otherwise, has become incapacitated to discharge the duties of his office, or has been guilty of neglect of duty, or of misconduct in his office, or of conduct unbecoming a police officer or has been found guilty of any crime, or whose conduct has been such as to bring reproach upon the police force.

Any charge brought against any member of the police force must be in writing in the form required by the police commission and a copy thereof must be served upon the accused officer or member at least three days before the time fixed for the hearing of such charge.

It is the duty of the police commission at the time set for hearing a charge against a police officer, to forthwith proceed to hear, try and determine the charge, according to the rules of said police commission. The accused shall have the right to be present at the trial in person and by counsel, and to be heard, and to give and furnish evidence in his defense. All trials shall be open to the public.

The chairman, or acting chairman, of the police commission, shall have power to issue subpoenas, attested in its name, to compel the attendance of witnesses at the hearing and any person duly served with a subpoena is bound to attend in obedience thereto, and the police commission shall have the same authority to enforce obedience to the subpoena, and to punish the disobedience thereof, as is possessed by a judge of the district court in like cases.

The police commission must, after the conclusion of the hearing or trial, decide whether the charge was proven or not proven, and shall have the power, by a decision of a majority of the commission, to discipline, suspend, remove or discharge any officer who shall have been found guilty of the charge filed against him.

Such action of the police commission shall, however, be subject to modification or veto by the mayor, made in writing, giving the reasons therefor, which shall become a permanent record of the police commission.

The findings and decisions of the police commission shall be final and conclusive unless modified or vetoed by the mayor, within five days from the date of the filing of such findings and decision with the city clerk.

When a charge against a member of the police force is found proven by the board, and is not vetoed by the mayor, the mayor must make an order enforcing the decision of the board, or if modified by the mayor, then such decision as modified, and such decision or order shall not be subject to review by any court on a question of fact.

The district court of the proper county shall have jurisdiction, however, in a suit brought by an officer or member of the police force, to determine whether the essential requirements of law as to the method of trial have been complied with, but no suit to review such hearing or trial or for reinstatement to office shall be maintained unless the same is begun within a period of sixty days after the decision of the police commission or order of the mayor has been filed with the city clerk, and in no case shall any officer or member who has been suspended or discharged, or placed upon the eligible list, be entitled to any salary or other emoluments of office, during the period of suspension, or during the time he remains upon the eligible list, or from the date of his dis-

charge by the police commission or the mayor, to the time of his reinstatement if the court should finally find he was entitled to be reinstated. No court shall have jurisdiction to hear or determine any question or controversy concerning the salary or compensation of any member of the police force now or hereafter accrued, except for services actually rendered.

In no case shall any officer or member of the police force, be discharged without a hearing or trial before the police commission, as herein provided, in all cities of the first class.

The mayor or chief of police, subject to the approval of the mayor, shall have the power in all cases, to suspend a policeman, or any officer, for a period of not exceeding ten days in any one month, without any hearing or trial, such suspension to be with or without pay as the order of suspension may determine. The mayor of any city shall have the power and authority at any time when he deems it expedient to employ not to exceed two persons at one time for a period not to exceed thirty days to do police duty who are not members of the police department.

Amd. Sec. 4, Ch. 119, L. 1923.

Cited as section 3309, Revised Codes, in *State ex rel. Lease v. Wilkinson et al.*, 59 Mont. 327, 334, 196 Pac. 878.

5101. Defining active and eligible list of officers. The city council shall have absolute and exclusive power to determine and limit the number of police officers and members to comprise the police force of any city, and to divide the police membership into two lists, one and [an] active list, who are to be actually employed and receive pay while so employed, and one and [an] eligible list, who shall not receive pay, while not actually employed as an officer, or member, and to reduce the number of the police force at any time. That such officers or members of the active list, temporarily relieved, from duty, shall become members of the eligible list without pay and shall be first entitled to reinstatement on the active list, in case of vacancy, according to their seniority in the services, and all others on the eligible list shall be entitled to fill a vacancy, in the order of their appointment. Such action of the council shall not be subject to review by any court.

In no event shall there by [be] any officers or members placed on the eligible list, except in case of temporary reduction of the police force, when the number already on the eligible list shall equal in number twenty per cent of the active list.

Amd. Sec. 5, Ch. 119, L. 1923.

Cited in *Sweeney v. City of Butte*, 64 Mont. 230, 243, 208 Pac. 943.

5106. Qualifications of police officers. The members of a police department of any city, at the time of their appointment under this act, shall not be less than twenty-one years of age nor more than forty years of age, but this restriction shall not apply to any member of any present police department, provided, however, that any city council shall have the power by ordinances duly passed and approved to retire any police officer on half pay, who shall have arrived at the age of sixty-five years, or who shall have served continuously as a police officer for a period of not less than twenty-five years, or who shall have become incapacitated

to perform the duties of his office by reason of injury or accident sustained while actually engaged in the performance of his duties as an officer.

In every case a police officer must be a citizen of the United States and have been a resident of the city or town in which he is appointed at least two years prior to such appointment, such qualifications also to apply to every officer on the eligible list, at the time he shall be transferred to the active list.

Every police officer must be able to speak and write understandingly the English language.

Amd. Sec. 6, Ch. 119, L. 1923.

CHAPTER 50.

FIRE DEPARTMENT—FIREMEN'S DISABILITY FUND.

5109. Council may establish fire department.

Cited as section 3326, Revised Codes,
in State v. Dryburgh, 62 Mont. 36, 43,
203 Pac. 508.

For text treatment of this subject see
vol. 18 Cal. Jur. 993.

5111. Powers of mayor to suspend firemen.

While in cities of the first class operating under the commission form of government, authorized by sections 5366–5399, the members of the fire department are protected in their tenure by the provisions of this section, the chief of the department may be removed at any time by a majority vote of the council. State v. Dryburgh, 62 Mont. 36, 203 Pac. 508.

5116.1. Levy for volunteer fire departments. For the purpose of supporting volunteer fire departments in any city or town which does not have a paid fire department, and for the purpose of purchasing the necessary equipment therefor, the council in any city or town, may assess and levy, in addition to other levies permitted by law, a special tax not exceeding two (2) mills on each dollar of the assessed valuation of the taxable property of the city or town; and, provided, further, that the words “assessed valuation” as used in this section shall be the percentage of the true and full valuation of the taxable property provided in section 2000 of the Revised Codes of Montana, 1921, and shall not be deemed to be the true and full valuation of such property.

En. Sec. 1, Ch. 26, L. 1927.

5117. Disability and pension fund. There shall be created and established in each incorporated city or town of the state of Montana where there is an organized fire department, recognized by city council, which said fire department has or shall hereafter form themselves into an association known as the fire department relief association of the city or town of (name of the city or town) and incorporated under the laws of the state of Montana, a fund to be known as “disability and pension fund” of the fire department relief association of the city or town of (naming the city or town), said fund to be held by the treasurer of such association, as provided by law, and to be kept in a separate fund. No fire department relief association shall be organized and incorporated under the provi-

sions of this act, unless it is in an incorporated city or town of this state, and has a duly organized fire department, consisting of either paid, part-paid, or volunteer firemen, or any or all such firemen, which said fire department must have fire fighting equipment in serviceable condition, of the value of seven hundred fifty dollars (\$750), or more, provided that the words "incorporated city or town" appearing in this act shall include any county seats whether incorporated or not.

Amd. Sec. 1, Ch. 58, L. 1927.

5118. Source of fund. The disability and pension fund of the fire department relief association of such city or town shall consist of such sums of money as may be derived from the levy of an annual tax for that purpose, levied by such city or town council as provided for by section 5119 of the Revised Codes of the state of Montana, 1921, as amended herein, and donations to the said association from any source, in land, money, or other valuable gifts, and from money received from the state of Montana as provided by law.

Any member of such relief association who shall receive any gift of money for his services other than the salary fixed by ordinance shall turn the same over to the credit of the said disability and pension fund.

Amd. Sec. 2, Ch. 58, L. 1927.

5119. Tax levy for fund. For the purpose of maintaining said disability and pension fund of such fire department relief association the city or town council may in the manner provided by law and at the time of the levy of the annual tax, levy a special tax of not to exceed one-tenth of one (1) mill on the dollar upon the assessed valuation of all taxable property within the limits of the said city or town, which said tax shall be collected as other taxes, and when so collected shall be paid into the disability and pension fund of the fire department relief association in said city or town.

Amd. Sec. 3, Ch. 58, L. 1927.

5120. Board of trustees. A board of trustees of such fire department relief association shall be created to consist of seven (7) members, to wit, the president of the fire department relief association, and the chief of the fire department, if an active member of the association, shall be ex-officio members thereof, and five members to be elected by the members of such association at the annual election of each year, to be held on or before the fifteenth day of April of each year.

Amd. Sec. 4, Ch. 58, L. 1927.

5121. Duties of trustees. The board of trustees of said fire department relief association shall audit the accounts of the said relief association from time to time, at least once every six months, and report the condition thereof to the said association:

The general management of the association shall be vested in a board of trustees. The board of trustees of such association when so directed by a majority vote of the members of such association, shall have the power to invest the funds or any part of the funds of the

association in such securities as are recommended by the state auditor and approved by state examiner.

Amd. Sec. 5, Ch. 58, L. 1927.

5122. Use of fire department disability fund.

Rep. Sec. 18, Ch. 58, L. 1927.

5123. Benefits, allowed for, how allowed, and how paid. Every fire department relief association may allow to its members benefits for the following causes, as provided by law.

1. A service pension to a member who, by reason of service, has become entitled to a service pension.

2. To a member who has become maimed or disabled for life in line of duty.

3. To a member who has suffered injury in line of duty.

4. To a member who has contracted sickness in line of duty.

5. Funeral expenses of a member.

6. Pensions to the widow, orphan or orphans of a deceased member.

All applications for relief shall be referred to the board of trustees. All claims shall be referred to the board of trustees for allowance or disallowance and claimant shall have the right to appeal to the association in the event his claim be disallowed. All claims shall be paid by warrant, duly authorized, drawn by the secretary, and countersigned by the president of the association, and on presentation thereof, the treasurer of the association shall pay the same out of the said pension and disability fund.

Amd. Sec. 6, Ch. 58, L. 1927.

5124. Embezzlement of funds. Any person who shall embezzle any of the money or other valuable thing belonging to the disability and pension fund of any fire department relief association, or who shall take part, in, or in any manner aid in any scheme or plan whereby said fund or association shall be defrauded out of any of the money in said fund, shall be guilty of a felony, and upon conviction thereof, shall be punished by imprisonment in the state prison for not less than one year or more than ten years.

Amd. Sec. 7, Ch. 58, L. 1927.

5126. Reports of insurance companies. The commissioner of insurance shall include in the blank form furnished to each fire insurance company for its annual statement, a list of all such incorporated cities or towns, and each company shall report therein the amount of premium received by it during the preceding year in each incorporated city or town. Before July 1st following said October 31st, mentioned in preceding section, the commissioner of insurance shall certify to the state auditor the name of each city or town which has an organized fire department and fire department relief association which has complied with provisions of section 5117 of the Revised Codes of the state of Montana 1921 as amended, which has been so reported to him and the amount of premiums received in each such city or town in such year by each fire insurance company.

Amd. Sec. 8, Ch. 58, L. 1927.

5127. State auditor to pay cities and towns fifty per centum (50%) of licenses collected. At the end of the fiscal year the state auditor shall issue and deliver to the treasurer of every city his warrant for an amount equal to fifty per centum (50%) of the licenses collected by the state auditor under section 6112 of these codes in proportion to the premiums so paid and collected by the said fire insurance companies in such cities and towns to the total premiums paid and collected by fire insurance companies in the entire state and pay this amount to the credit of a special fund into the state treasury, which fund shall be known as the "disability and pension fund" of the fire department relief association, and for that purpose, there is hereby created a fund to be known as the "disability and pension fund" of the fire department relief association and the state treasurer is hereby directed and authorized to keep such an account of said fund.

Amd. Sec. 9, Ch. 58, L. 1927.

5128. State treasurer to pay warrants. The state treasurer is hereby authorized and directed, upon the presentation to him of said warrant of the state auditor, to pay to the treasurer of any such city or town, out of the fund known as the disability and pension fund of the fire department relief association as by law designated, the amount of such warrant specified, which amount shall be paid by said city treasurer to said fire department relief association.

Amd. Sec. 10, Ch. 58, L. 1927.

5129. Fire department relief association. The confirmed members of the fire department or departments, together with the volunteer fire department or departments recognized by the city or town council in each incorporated city or town of this state are hereby authorized to form themselves into a local association, to be known as the fire department relief association of the city or town of (naming the city or town), and when so formed, it shall incorporate under the laws of this state. In the event of the formation of such fire department relief association, there shall be elected by a majority vote of the members thereof, the following officers, to wit: A president, a secretary, a treasurer, and three members to serve as members of the board of trustees, which said board of trustees shall consist of five members, of which the chief of the fire department, and the president of the fire department relief association shall be ex-officio members thereof. After the incorporation of any such fire department relief association, the said elective officers shall be elected annually on or before the fifteenth day of April of each year.

Amd. Sec. 11, Ch. 58, L. 1927.

5130. Report of secretary and treasurer of fire departments relief association, examination of books and accounts. The secretary and treasurer of every fire department relief association so formed shall annually prepare a detailed report of its receipts and expenditures for the preceding year, showing to whom and for what purpose the money has been paid and expended, and file it with the association, and a duplicate with the state auditor. No money shall be paid to the treasurer of such

fire department relief association until such report is so filed. No one serving as a substitute or on probation, nor any fireman in the city having such association who is not a member thereof shall be deemed a member of the association within the meaning of this act. No treasurer of any such association shall enter upon his duties until he has given to the association a good and sufficient bond of not less than double the amount of all funds and securities in the hands of said treasurer for the faithful discharge of his duties according to law. The amount of such bond to be approved and paid for by such association. All of the financial books and accounts of such association with reference thereto shall be subject at all times to examination by the state examiner. And the state examiner is hereby authorized, empowered and required to make such an examination at least once in each year, or upon complaint being duly made to him that the money or any part thereof paid under the provisions of this act to the treasurer of such association has been or is being expended for any unauthorized purpose, and if such money upon examination is found to have been expended contrary to the authority given, he shall so report to the governor, upon whose direction to the state auditor no further warrants shall be issued to such fire department relief association treasurer until the money so expended has been returned.

Amd. Sec. 12, Ch. 58, L. 1927.

5131. Duties of association and city treasurers. Whenever such fire department relief association is formed as provided by law and when the treasurer of such association has furnished the bond as provided by law, such city treasurer shall pay to said fire department relief association treasurer all money in the hands of the city treasurer to the credit of said disability and pension fund taking the receipt of said treasurer and said city treasurer shall thereafter from time to time, as moneys are received by him for the credit of said fund or association turn the same over to the treasurer of said relief association, taking proper receipts therefor.

Amd. Sec. 13, Ch. 58, L. 1927.

5132. Pensions to retired firemen. Every fire department relief association whenever certificate of incorporation or its by-laws so provide may pay out of any money in the disability and pension fund a service pension in an amount not to exceed one-half of the monthly salary last received by such pensioner as may be provided for, to each of its members who has heretofore retired, or may hereafter retire, and has reached or shall hereafter reach the age of fifty (50) years, and who has done active duty for twenty (20) years or more as a member of a volunteer, paid or partly paid and partly volunteer fire department in the municipality where such association exists. Such pension may be decreased or increased within the amount specified, whenever the amount of funds on hand or the lack of funds render such action advisable or necessary. No such pension shall be paid to any person while he remains a member of the fire department and any person receiving such pension shall not be entitled to other relief from such association.

In case of volunteer or call men the compensation shall not exceed the sum of seventy-five dollars (\$75) per month.

Amd. Sec. 14, Ch. 58, L. 1927.

Validity of statute or ordinance providing for pensions for firemen, note, 37 A. L. R. 1162.

5133. Payment of service pension. Every fire department relief association now or hereafter organized in this state which is now incorporated or which may hereinafter be incorporated may pay out of the disability and pension fund, service pensions in such amounts and in such manner as its by-laws shall designate, under the provisions of this act, not exceeding, however, one-half of the sum last received as a monthly salary by such pensioned member monthly. Nothing herein contained shall be construed as permitting any member of a fire department relief association receiving benefits or allowances under the provisions of this act, and, at the same time, for the same casualty, an allowance under the Montana Workmen's Compensation Act. In case of volunteer or call men such pension shall not exceed the sum of seventy-five dollars (\$75) per month.

Amd. Sec. 15, Ch. 58, L. 1927.

5134. Pension to widows and orphans. Such fire department relief association may pay to the widow and orphans of deceased firemen in such sums and under such limitations and conditions as its by-laws shall provide, and not contrary to the laws of this state, a pension not exceeding however, a sum equal to one-half of the monthly salary last received by such deceased fireman, monthly to each pensioner or to any one family, with the right to increase or decrease the amount of such pension when on account of the amount of funds, or lack of funds on hand, or for other good cause, such reduction or increase seems to the association advisable or reasonable. In case of volunteer or call men the compensation shall be the same as paid firemen and not to exceed the sum of seventy-five dollars (\$75) per month.

Amd. Sec. 16, Ch. 58, L. 1927.

5135. Use of disability and pension fund of fire department relief association. Said fund shall not be used for any other purpose whatsoever, other than for the payment of the following:

1. A service pension to a member who, by reason of service, has become entitled to a service pension.

2. A pension to a member who has become maimed or disabled in line of duty.

3. A benefit or allowance to a member who has suffered injury in line of duty.

4. A benefit or allowance to a member who has contracted sickness in line of duty.

5. To defray the funeral expenses of a member, in an amount not to exceed however the sum of two hundred fifty dollars (\$250).

6. Payment of a pension to the widow, orphan or orphans of a deceased member.

7. All claims shall be paid by warrant duly authorized, drawn by the secretary, and countersigned by the president of the association and on presentation thereof, the treasurer shall pay the same out of the said disability and pension fund.

Amd. Sec. 17, Ch. 58, L. 1927.

5135.1. Effect of decision holding any part of act unconstitutional. If any section, sentence, clause, paragraph, or phrase of this act is for any reason held to be unconstitutional or void, such decision shall not affect the validity of the remaining portions of this act, so long as sufficient remains of the act to render the same operative and reasonably effective for carrying out the main purpose and intention of the legislature in enacting the same, as such purpose and intention may be disclosed by the act.

Amd. Sec. 18, Ch. 58, L. 1927.

5138. Hours of work of members of fire department in cities of first and second class. No fireman, or member or employee of the fire department of cities of the first and second class, shall be required to be on continuous duty to exceed fourteen (14) hours of each twenty-four (24) hour day, save and except the chief of such department, who shall be subject to call at any time; provided, that the chief of any department, or a captain thereof, may in his discretion, in cases of necessity, recall to service any member or employee of the fire department then off duty who shall be needed by such department at the time called; (provided, however, that each and every salaried fireman shall be allowed one day off duty in each eight-day (8) period after the taking effect hereof, without loss of compensation).

Amd. Sec. 1, Ch. 135, L. 1927.

CHAPTER 51.

FIRE PROTECTION IN UNINCORPORATED TOWNS.

5143. Fire companies—How organized.

Cited as section 2076, Revised Codes, in *State v. Board of County Commrs.*, 62 Mont. 69, 71, 202 Pac. 1108.

5148. Fire protection—Establishment of fire districts.

Where a board of county commissioners in its discretionary power had by resolution established fire limits in an unincorporated town under this section, and directed the levy of a special tax as therein provided, it could, in its discretion, properly rescind its action, no one in the meantime having taken any action to his prejudice in reliance upon the resolution first passed. *State ex rel. Peninsula Security Co. v. Board of County Commrs.*, 62 Mont. 69, 202 Pac. 1108.

5148A. Establishment of fire limits within unincorporated towns. The board of county commissioners whenever a petition signed by two-thirds of the property owners of an unincorporated town is filed with them, are authorized, for the purpose of guarding against fire, to establish fire limits within the town and to prescribe rules and regulations for the construction and maintenance of fire-proof buildings within such limits.

En. Sec. 1, Ch. 148, L. 1925.

5149. Directors of fire districts—Issuance bonds. Whenever the board of county commissioners shall have established a fire district in any unincorporated town or village, said board of county commissioners shall be and is hereby constituted ex officio a board of directors of such fire district. The board of directors of any duly established fire district in unincorporated towns or villages within this state shall, whenever a majority of the directors so decide, submit to the electors of the district the question of whether the board shall be authorized to issue bonds to a certain amount, not to exceed three per cent of the per centum of the assessed value of the taxable property in such district, and bearing a rate of interest not exceeding six per cent, for the purpose of purchasing fire equipment, necessary lands, erecting buildings for fire purposes, acquiring a water supply, purchasing or otherwise acquiring or constructing a water system and establishing pipe-lines. No such bonds shall be issued unless a majority of all the votes cast at any such election shall be cast in favor of such issue. Such bonds may be either amortization or serial bonds, but shall not extend over a longer term than ten years.

Amd. Sec. 1, Ch. 130, L. 1925.

5150. Conduct of election—Voting—Bonds. The time fixed for holding such election must be at least thirty days after the date of the order calling such election. Notice of such election must be given by the board of directors by posting notices thereof, at least ten days before the day of election, in three public places within such district, one of which must be at the polling place. The board of directors must designate a polling place within such district and name three persons residing therein, and who are qualified to vote at such election, as judges and clerks of such election, and a copy of the order fixing the day of election must be delivered to the county clerk and recorder of the county in which such district is located immediately after the same is made. Upon receipt of the copy of such order the county clerk and recorder must, at least twenty days before the day fixed for holding such election, cause a notice to be posted in at least three public places in such fire district, stating that the register of voters for the precinct in which such district is located will be closed on a day to be specified therein, and which must be the tenth day before the day for holding such election, and on the day specified therein the register of voters for such precinct must be closed and remain closed until after the holding of such election. The county clerk and recorder shall, immediately after the closing of registration for such precinct, make a copy of the register of voters for such precinct and deliver the same to the county treasurer who shall compare the same with the assessment-books for the last assessment for state and county taxes, and note after the name of each person contained in such register whether such person's name appears on such assessment-books, and make out and sign a certificate giving the names of all such persons whose names do appear on such assessment-books and attach the same to such register, and the treasurer must then return such register to the county clerk and recorder who must deliver the same to the persons named as judges, and clerks of such election. At such election no person whose name does not appear

in such treasurer's certificate as a taxpayer whose name appears on the last assessment-books shall be permitted to vote, and no person whose name does so appear in such certificate shall be permitted to vote unless he shall reside within the limits of the fire district, and every person offering to vote at such election, and otherwise qualified to do so, must make and subscribe an affidavit, before one of such judges of election, stating that he actually resides within the limits of such fire district, and all such affidavits shall be preserved and delivered to the board of directors of the district at the same time the returns are delivered to such board. The polls for such election shall be opened at 1 o'clock in the afternoon and remain open until 6 o'clock in the afternoon. The judges and clerks shall count the votes cast at such election and shall make a return thereof to the directors of district, who shall canvass and declare the result of such election. The board of directors shall cause the affidavits herein provided for and the ballots to be prepared for such election in a number equal to the total number of registered electors in the precinct in which the district is located, which ballots shall be substantially in the following form:

"Shall bonds be issued and sold to the amount of dollars and bearing not to exceed six per cent interest per annum and for a period not exceeding years for the purpose of (state purpose)."

☐ Bonds—Yes.

☐ Bonds—No.

The elector shall prepare his ballot by making an X in the square before the proposition for which he desires to vote. If a majority of the votes cast at such election is in favor of issuing bonds the board of directors shall issue such bonds; such bonds shall be issued in substantially the same manner and form as bonds of school districts of the third class, shall bear the signature of the chairman of the board of directors, and of the county recorder, as ex-officio secretary of the fire district; if coupons are attached to the bonds they shall also be signed by such chairman and secretary, provided that a lithographic, printed or engraved facsimile signature of the president and secretary may be affixed to the coupons if so recited in the bonds, and the seal of the fire district shall be affixed to each bond. Each bond shall be registered in the office of the county treasurer in a book provided for that purpose, which shall show the number and amount of each bond and the person to whom the same is issued or sold; and the said bonds shall be sold by the board of directors as hereinafter provided.

Amd. Sec. 1, Ch. 130, L. 1925.

CHAPTER 52.

PUBLIC PARKS AND PLAYGROUNDS.

5159. Public parks and grounds—Additional indebtedness of municipalities to provide. A city or town council, or commission, in addition to the power it now has under the law, has and is hereby granted and given the further power to contract an indebtedness on behalf of a city

or town, upon the credit thereof, by borrowing money or issuing bonds for the purpose of purchasing and improving lands for public parks and grounds; provided, that the total amount of indebtedness authorized to be contracted in any form, including the then existing indebtedness, must not at any time exceed three per centum of the per centum of the total assessed valuation of the taxable property of the city or town, as ascertained by the last assessment for state and county taxes; and provided, further, that no money must be borrowed on bonds issued for the purchase of lands and improving same for public parks and grounds until the proposition has been submitted to the vote of the taxpayers of the city or town affected thereby, and a majority vote cast in favor thereof.

Amd. Sec. 1, Ch. 114, L. 1923.

Taxation for public parks as within constitutional provisions prohibiting legislature from imposing taxes for city, county or corporate purposes or providing that

legislature may invest power to levy such taxes in local authorities, note, 46 A. L. R. 707.

For text treatment of this subject see vol. 20 Cal. Jur. 460.

CHAPTER 53A.

DISPOSAL OF IMPOUNDED ANIMALS.

5176. Contents of notice. Said notice shall be in writing and shall give the number, description, marks and brands of such stock when impounded, seized, restrained or held, with the reasons therefor, together with the amount of charges, if any, which shall be reasonable, and in no case exceed the actual cost of holding, and costs in event of sale, and what disposition will be made of said stock if such charges are not paid, and when and where such disposition shall be made.

Amd. Sec. 1, Ch. 69, L. 1927.

CHAPTER 55.

TAXATION AND LICENSES.

5194. Amount of tax for municipal purposes—Distribution of funds—Levy for park purposes. The amount of taxes to be assessed and levied for general municipal or administrative purposes in cities of the first class with a population of thirty-five thousand or over must not exceed one and two-tenths per centum of the assessed value of the taxable property in all such cities of the first class, and all other cities and towns must not exceed one and one-half per centum on the per centum of the assessed value of the taxable property of the city or town; and the council in each city or town may distribute the money collected into such funds as are prescribed by ordinance; provided, that for the purpose of maintaining public parks, the council in any city or town may assess and levy, in addition to the said levy for general municipal or administrative purposes, not exceeding two mills on the dollar on the per centum of the assessed value of the taxable property of the city or town.

Amd. Sec. 1, Ch. 156, L. 1923; Amd. Sec. 1, Ch. 175, L. 1925.

To the extent of any repugnancy be-

tween them, this section is controlled by sections 1999, 2000, which fix the taxable value of property and prescribe the stand-

ard for computing taxes on real property and therefore a tax in excess of ten mills on the dollar of taxable value was invalid. *Wibaux Improvement Co. v. Breitenfeldt*, 67 Mont. 206, 215 Pac. 222.

Cited in *First Nat. Bank of Glendive*

v. Sorenson, 65 Mont. 1, 5, 6, 210 Pac. 900.

Obligation for local improvements as within municipal debt limit, note, 33 A. L. R. 1415.

For text treatment of this subject see vol. 18 Cal. Jur. 879.

5195. Cities and towns may raise money by taxation in excess of levy now permitted, how.

Cited in *Wibaux Improvement Co. v. Breitenfeldt*, 67 Mont. 206, 208, 215 Pac. 222.

5200. Special taxes and assessments.

Under this section a city had the power to levy special taxes for the purpose of paying interest on bonded indebtedness and creating a sinking fund, and the contention that the taxing power of a city

of a class other than the first class was limited to a ten mill levy for all purposes by section 5194, has no merit. *First Nat. Bank of Glendive v. Sorenson*, 65 Mont. 1, 210 Pac. 900.

5201. Taxes in cities which have exceeded the constitutional limit of indebtedness. All taxes heretofore levied and collected, or to be collected for municipal and administrative purposes by any city or town, the indebtedness of which equals or exceeds the limit provided in section 6, article XIII of the constitution, may be used in payment of current expenses during the fiscal year for which said taxes were levied, the same as though a special levy had been made for each of said purposes. And the council of any such city or town is hereby authorized to designate the amount of said general levy applicable to each of said purposes, and the amount so designated shall constitute a special fund for the special purpose of paying the expenses incurred for such purpose, and such expenses shall be payable out of such fund and not otherwise; provided, that the aggregate of all taxes authorized for general municipal and administrative purposes shall not exceed one and one-half per cent annually upon the per centum of the assessed value of all taxable property in such city or town.

Amd. Sec. 2, Ch. 175, L. 1925.

5203. Annual tax—Equalization and collection.

By the general repealing clause found in chapter 96, L. 1923, both this section and subdivision 2 of section 5039, giving authority to cities to levy and collect taxes, as well as the ordinances enacted in pursuance thereof, were repealed.

Thomas v. City of Missoula et al., 70 Mont. 478, 226 Pac. 213.

Cited as section 3346, Revised Codes, in *First Nat. Bank of Glendive v. Sorenson*, 65 Mont. 1, 6, 210 Pac. 900.

5214. Collection of taxes—Delinquent taxes.

Under this section, the county treasurer must collect taxes for a city or town which has not by ordinance placed the duty of collection upon its own treasurer, no provision, however, being made as to when the money so collected must be turned over to the city or town treasurer. Held, that the county treasurer must within a reasonable time after collection compute the amount due the city or town and pay it over to the proper custodian,

and that the lapse of one month after collection of the bulk of the city or town taxes is not a reasonable time within which to perform that duty. *State ex rel. City of Cut Bank v. McNamer*, 62 Mont. 490, 205 Pac. 951.

The county treasurer who collects taxes for a city and which constitute city and not county funds is without authority to prorate such funds among banks designated by the board of county commis-

sioners as depositaries for county moneys. Cited in *State v. McGraw*, 74 Mont. State v. McNamer, 62 Mont. 490, 205 152, 156, 240 Pac. 812. Pac. 951.

5215. Duties of city treasurer.

Cited in *Gagnon v. City of Butte*, 75 Mont. 279, 287, 243 Pac. 1085.

5215.1. Certification delinquent special improvement taxes to treasurer. Whenever, in a city or town whose treasurer collects its own taxes or special assessments, or both thereof, any such taxes or assessments shall become delinquent, no tax sale shall be held by such city or town treasurer therefor, but such city or town treasurer must, within ten (10) days after the date the same become delinquent, certify all such delinquent taxes and assessments to the county treasurer of the county in which the city or town is situated. Such certificate shall contain the description of each lot or parcel of land on which any tax or assessment has become delinquent, the name and address of the person to whom assessed, the date when the same became delinquent, the amount of the delinquent tax or assessment, the penalty to be added thereto, and the total amount of such delinquent tax or assessment with penalty added. If any special assessment is payable in installments and any installment thereof becomes delinquent, the amount of such delinquent installment shall be included in such certificate, provided, however, that if the city or town council, by the adoption of an appropriate resolution shall declare the whole of the assessment remaining unpaid to be delinquent, as provided in section 5251 Revised Codes of Montana, 1921, then the whole of the assessment remaining unpaid shall be included in such certificate.

Upon receipt of such certificate the county treasurer shall enter such delinquent taxes and assessments in the delinquent tax list of the county, and the county treasurer in selling property for delinquent taxes must include all such city and town delinquent taxes and assessments, there being but one sale for each piece of property, such sale to cover the aggregate of such city or town, county and state taxes and special assessments, with the penalties, interest and costs provided by law.

En. Sec. 1, Ch. 148, L. 1927.

5216. Annual tax levy. The council must on or before the second Monday of August of each year, by resolution, determine the amount of the city or town taxes for all purposes, to be levied and assessed on the taxable property in the city or town, for the current fiscal year and the city or town clerk must at once certify to the county clerk a copy of such resolution and the county treasurer must collect said taxes as in this chapter provided: Provided, that in cities where the council has provided by ordinance for the collection of such taxes by the city treasurer, the city clerk must certify a copy of such resolution to said city treasurer.

Amd. Sec. 1, Ch. 49, L. 1925.

The words "levy" and "assess" as used in sections of the codes authorizing cities to levy and assess taxes are used interchangeably and not in a narrow or technical sense, both referring to the act of

determining the amount and levying the rate of taxation—the doing of all those acts required for the imposition of a tax to be paid by the property owners. *First Nat. Bank of Glendive v. Sorenson*, 65 Mont. 1, 210 Pac. 900.

5217. Fiscal year. The fiscal year of cities and towns commences on the first day of July of each year, and ends on the last day of June of each year.

Amd. Sec. 1, Ch. 25, L. 1927.

5218. Annual appropriation ordinance. The council must, during the month of July in each fiscal year, pass an ordinance to be known as the "annual appropriation for the of for the fiscal year beginning July 1, 19....," in which ordinance there must be appropriated enough money to defray the expenses or liabilities of the city or town for such fiscal year, and there must be specified therein the amount appropriated for each separate object or fund, and the salary or compensation to be paid to each officer of the city or town.

Amd. Sec. 2, Ch. 25, L. 1927.

5224. License tax may be levied.

For discussion of authority of cities to impose license tax under the police power, reasonableness of license schedules,

etc., see *City of Bozenman v. Nelson*, 73 Mont. 147, 237 Pac. 528.

CHAPTER 56.

SPECIAL IMPROVEMENT DISTRICTS—LIGHTING DISTRICTS—STREET SPRINKLING.

5226. Special improvement districts—Placing wires underground.

Cited in *Ricker et al. v. City of Helena et al.*, 68 Mont. 350, 358, 218 Pac. 1049.

5227. Resolution of intention—Notice—Materials.

Under this section a city has the power to fix the boundary of a special improvement district at any distance from the front line of a street and is not required to include the whole platted area of each lot. *Ricker et al. v. City of Helena et al.*, 68 Mont. 350, 218 Pac. 1049.

In an action to set aside the proceedings of a city council had in the creation of a special street improvement district and to enjoin the carrying out of a paving contract entered into, on the grounds that the city had joined in one district property abutting on several streets, that the character of work to be done on one street was different from that to be done on others, and that property on several streets would not be benefited by the paving on another, proceedings reviewed and held, in view of the power lodged in the city council by this section to include in one district and in one contract any number of streets, any kind of work, etc., that the council did not abuse its discretion. *Ricker et al. v. City of Helena et al.*, 68 Mont. 350, 218 Pac. 1049.

Under a resolution of intention to create a special improvement district for the purpose of paving streets, with the necessary excavations, cutting, filling, etc.,

and "incidental work," defendant city was properly enjoined from entering into a contract the provisions of which departed substantially from the purposes set forth in the resolution, in that they included reduction in the street widths and the construction of new parking, curbing and storm sewers, each of which constitutes a distinct city improvement under this section, and none of which was therefore subject to inclusion under the term "incidental work." *Evans et al. v. City of Helena et al.*, 60 Mont. 577, 199 Pac. 445.

In its resolution of intention to create a special improvement district, the city council must describe the character and nature of the contemplated improvements with sufficient particularity to advise the taxpayer affected, and the improvements to be made must correspond substantially with those set forth in the resolution and no material change or departure therefrom can be made. *Evans et al. v. City of Helena et al.*, 60 Mont. 577, 199 Pac. 445.

A resolution of intention to create a special improvement district the title of which stated that it was a "resolution of intention," etc., the body of which

substantially contained the recitals required by statute and advised the taxpayers of the time and place where their objections to its creation would be heard, was sufficient as against the objection that in it the city council had not declared its intention to create it. Aiken

et al. v. City of Glendive, 60 Mont. 1, 197 Pac. 1003.

Cited in Almas v. City of Havre, 70 Mont. 33, 35, 223 Pac. 896.

For text treatment of this subject see vol. 19 Cal. Jur. 233.

5228. Charges of cost of improvement upon extended district not fronting on street improved. Whenever the contemplated work or improvement, in the opinion of the city council, is of more than local or ordinary public benefit, or whenever, according to estimates furnished by the city engineer, the total estimated costs and expenses thereof would exceed one-half the total assessed value of the lots and lands assessed, if assessed upon the lots or lands fronting upon said proposed work or improvement, according to the valuation fixed by the last assessment-roll whereon it was assessed for taxes for municipal purposes, the city council may make the expense of such work or improvement chargeable upon an extended district, and which may include other lots not fronting on the improvement, and which the said city council shall, in its resolution of intention, declare to be the district benefited by said work or improvements, and to be assessed to pay the costs and expenses thereof; provided such extended district shall not include any property situate more than one thousand (1,000) feet from the contemplated work or proposed improvement.

Amd. Sec. 1, Ch. 135, L. 1923.

In an action to recover improvement taxes paid under protest, this section not so providing, a resolution of intention to create an extended improvement district including lots not fronting on the improvement, for the purpose of installing water-mains and fire protection apparatus,

need not recite that the contemplated work was of more than local or ordinary public benefit, the adoption of the resolution being a sufficient finding that in the opinion of the city council the proposed improvement was of that character. Almas v. City of Havre, 70 Mont. 33, 223 Pac. 896.

5229. Protests against proposed work. At any time within fifteen days after the date of the first publication of the notice of the passage of the resolution of intention, any owner of property liable to be assessed for said work may make written protest against the proposed work, or against the extent or creation of the district to be assessed, or both. Such protest must be in writing, and be delivered to the said clerk of the city council, who shall indorse thereon the date of its receipt by him. At the next regular meeting of the city council after the expiration of the time within which said protest may be so made, the city council shall proceed to hear and pass upon all protests so made, and its decision shall be final and conclusive; provided, however, that when the protest is against the proposed work, and the cost thereof is to be assessed upon the property fronting thereon, and the city council finds that such protest is made by the owners of forty per cent of the property fronting on the proposed work, or when the protest is against the proposed work, and the cost thereof is to be assessed upon the property within an extended district, and the city council finds that such protest is made by the owners of more than forty per cent of the area of the property to be assessed for said improvements, no further proceedings shall be taken for a period of six months from the date when said protest was received by the said clerk of the city council; except in case

the improvements are the construction of sanitary sewers, when the said protest may be overruled by an affirmative vote of a majority of the members of the city council; unless such protest is made by the owners of more than sixty per cent of the property affected as herein provided, in which event the protest must be sustained as to the construction of such sanitary sewers.

In determining whether or not sufficient protests have been filed on a proposed district to prevent further proceedings therein, property owned by a county, city, or town shall be considered the same as other property in the district. The city council may adjourn said hearing from time to time.

Amd. Sec. 2, Ch. 135, L. 1923.

In determining whether forty per cent of the owners of property affected by a proposed special improvement have filed protests against it, the city or town council is authorized by this section, as amended by chapter 135, L. 1923, to take into consideration property owned by it

and included in the district, such property being subject to assessment therefor the same as privately owned property. *Ricker et al. v. City of Helena et al.*, 68 Mont. 350, 218 Pac. 1049.

For text treatment of this subject see vol. 19 Cal. Jur. 251.

5230. Jurisdiction to order proposed improvements.

Cited in *Almas v. City of Havre*, 70 Mont. 33, 36, 223 Pac. 896.

5238. Methods for payment of improvements. To defray the cost of the making of any of the improvements provided for in this act, the city council shall adopt one of the two following methods of assessment:

(a) The city council shall assess the entire cost of such improvements against the entire district, each lot or parcel of land within such district to be assessed for that part of the whole cost which its area bears to the area of the entire district, exclusive of streets, avenues, alleys, and public places; provided, however, that the city council, in its discretion, shall have the power to pay the whole or any part of the cost of any street, avenue, or alley intersections out of any funds in its hands, available for that purpose, or to include the whole or any part of such costs within the amount of the assessment to be paid by the property in the district. In order to apportion the cost of any of the improvements herein provided for between the corner lot and the inside lots of any block, the council may, in the resolution creating any improvement district, provide that whenever any of the improvements herein provided for shall be along any side street, or bordering or abutting upon the side of any corner lot of any block, that the amount of the assessment against the property in such district, to defray the cost of such improvements, shall be so assessed that each square foot of the land, embraced within any such corner lot, shall bear double the amount of the cost of such improvement, that a square foot of any inside lot shall bear.

(b) The city council shall assess the cost of such improvements against the entire district, each lot or parcel of land within such district, bordering or abutting upon street or streets whereon or wherein the improvement has been made, in proportion to the lineal feet abutting or bordering the same; provided, however, that this method of assessment shall not apply to assessments in improvement districts created under

the provisions of section 5228 of this code; and provided, further, that the city council, in its discretion, shall have the power to pay the whole or any part of the cost of any street, avenue, or alley intersections out of any funds in its hands, available for that purpose, or to include the whole or any part of such costs within the amount of the assessment to be paid by the property in the district.

Whenever any portion of the surface of a paved street is occupied or used for railway or street railway purposes, it shall be and continue to be the duty of the owner or operator of such railway or street railway to fully repair any injury or damage to such pavement caused by such railway or street railway either in the operation of its cars or in the laying or repair of its tracks, and in case of a failure or refusal of such owner or operator so to repair such pavement within a reasonable time after notice by the city council, the city council is authorized and empowered to cause such repairs to be made and to assess the cost thereof to such owner or operator and to enforce collection thereof as in the case of taxes.

Whenever any lot, piece or parcel of land belonging to the United States, or mandatory of the government, shall front upon the proposed work or improvement, or be included within the district declared by the city council in its resolution of intention to be the district to be assessed to pay the costs and expenses thereof, said council shall, in the resolution of intention, declare that said lots, pieces or parcels of land, or any of them, shall be omitted from the assessment thereafter to be made to cover the costs and expenses of said work or improvement, and the cost of said work or improvement in front of said lots, pieces or parcels of land shall be paid by the city from its general fund.

It shall be lawful for the owner or owners of lots or land fronting upon any street, the width and grade of which shall have been established by the city council, to perform, at his or their own expense (after obtaining permission from the council so to do, but before said council has passed its resolution of intention to order grading exclusive of this), any grading upon said street, to its full width, or to the center line thereof and to its grade as then established, and thereupon to procure, at his or their own expense, a certificate from the city engineer, setting forth the number of cubic yards of cutting and filling made by him or them in such grading, and proportions performed by each owner, and that the same is done to established width and grade of said street, or to the center line thereof, and thereafter to file said certificate with the city engineer, which certificate the engineer shall record in a book kept for that purpose in his office, properly indexed. Whenever thereafter the city council orders the grading of said street, or any portion thereof, on which any grading certified as aforesaid has been done, the bids and contracts must express the price by the cubic yard for cutting and filling in grading; and the said owner or owners and his or their successors in interest shall be entitled to credit, on the assessment upon his or their lots and lands fronting on said street for the grading thereof, to the amount of the cubic yards of cutting and filling set forth in his or their certificate, at the prices named in the contract for said cutting and filling; or, if the grade meanwhile has been duly altered, only for so much of said certified work as would be required for grading to the

altered grade; provided, however, that such owner or owners shall not be entitled to such credit as may be in excess of the assessments for grading upon the lots and lands owned by him or them, and proportionately assessed for the whole of said grading; and the city clerk shall include in the assessment for the whole of said grading upon the same grade the number of cubic yards of cutting and filling set forth in any and all certificates so recorded in his office, or for the whole of said grading to the duly altered grade so much of said certified work as would be required for grading thereto, and shall enter corresponding credits, deducting the same as payments upon the amounts assessed against the lots and land owned respectively, by said certified owners and their successors in interest; provided, however, that he shall not so include any grading quantities or credit any sums in excess of the proportionate assessments for the whole of the grading which are made upon any lots and lands fronting upon said street, and belonging to any such certified owners or their successors in interest. Whenever any owner or owners of any lots and lands fronting on any street shall have heretofore done, or shall hereafter do any work (excepting grading) on such street, in front of any block, at his or their own expense, and the city council shall subsequently order any work to be done of the same class in front of the same block, said work so done at the expense of such owner or owners shall be excepted from the order ordering work to be done; provided, that the work so done at the expense of such owner or owners shall be upon the official grade, and in condition satisfactory to the city engineer at the time said order is passed.

Amd. Sec. 1, Ch. 163, L. 1925.

For text treatment of this subject see vol. 19 Cal. Jur. 290.

5238.1. Inclusion unplatted lands in special improvement district.

That whenever any unplatted, undedicated or unsurveyed lot, piece or parcel of land that separates one platted part of the city from another platted part of said city, lying wholly within the boundaries of any city or town, except land owned by the United States, shall abut or border upon any special improvement district, or be included within the boundaries of any special improvement district of such city or town, the council of such city or town may cause the same to be included within and made a part of such special improvement district, in the same manner as other property within such special improvement district and may assess the same for its proportionate share of the cost of making or maintaining such improvements in the same manner as other property within such special improvement district.

En. Sec. 1, Ch. 16, L. 1923.

5239. Sewer systems.

A "trunk" sewer, i. e., one which receives the discharge from district sewers, is a public sewer within the meaning of this section. *Rush v. Grandy et al.*, 66 Mont. 222, 213 Pac. 242.

The cost of constructing a public sewer, as distinguished from a district sewer,

must be provided for, under this section either from the general or sewer fund or by the sale of bonds, and may not be assessed on the basis of area under the special improvement district plan provided by section 5238. *Rush v. Grandy et al.*, 66 Mont. 222, 213 Pac. 242.

5240. Assessment to pay cost of improvements.

Throughout the special improvement district statute, exactions for special improvements are referred to as taxes (sections 5240, 5244, 5245, 5247, 5248, 5251, 5253, 5266, 5267, 5276), thus indicating

a legislative intent to include under the term "taxes" special improvement taxes as well as general and ad valorem taxes. *Thomas v. City of Missoula et al.*, 70 Mont. 478, 226 Pac. 213.

5249. Form of bonds and warrants.

Under the rule that the law which subsists at the time a contract is entered into forms a part of the contract and measures the extent of the obligation incurred, held that where a city incurred no primary liability for the payment of special improvements at the time they were made and bonds issued therefor (in 1907) under the then special improvement statute by which the bondholder was required to look to the assessments made for their payment, its liability in that respect was unaffected by any change made in the law by the enactment of chapter 89, L. 1913, even though the bonds did not mature until 1920. *Gagnon v. City of Butte*, 75 Mont. 279, 243 Pac. 1085.

A holder of bonds issued for a special

street improvement in 1910 under sections 3367-3429, Revised Codes of 1907, providing inter alia that the holder or owner of bonds issued under the act should not have any claim against the city except from the special assessments made for the improvement, the bonds themselves providing that they were payable out of the particular improvement district fund, and not otherwise, cannot hold the city liable for their payment for the failure of its treasurer to make collections from delinquent property owners. *Gagnon v. City of Butte*, 75 Mont. 279, 243 Pac. 1085.

Cited as section 25, L. 1915, page 340, in *Evans et al. v. City of Helena et al.*, 60 Mont. 577, 592, 199 Pac. 445.

5250. Payment under contracts. The city or town council may provide for making payments for improvements in any special improvement district in one of the two following methods:

1. The council may provide in the contract for the making of the improvements that such contract shall be payable in bonds or warrants issued under the provisions hereof, and that such bonds or warrants shall be delivered to the contractor, or contractors, either in installments as the work progresses, or upon the entire completion thereof; provided, however, that no bonds or warrants must be delivered to the contractor or contractors in excess of the amount of work actually done at the time of delivery, nor shall the total amount issued be in excess of the total cost and expense of the improvements, and no bond or warrant shall be delivered or received in payment of a less sum than its face value.

2. The city or town council may sell bonds or warrants issued under the provisions hereof, in an amount sufficient to pay that part of the total cost and expense of making the improvement which is to be assessed against the property within the district, to the highest and best bidder therefor for cash, and may use the proceeds of such sale in making payment to the contractor, or contractors, and such payment may be made either, from time to time, on estimates made by the engineer in charge of such improvements for the city or town, or upon the entire completion of the improvements and the acceptance thereof by the city or town council.

When it becomes necessary to pay for private property taken for the opening, widening or extending of any street, avenue, or alley, or to pay any amount awarded or recovered on account of damages to any property caused by the making of any improvements, in money in cases where the person whose property is so taken or damaged refuses to receive his pay in warrants or bonds, then the council shall have the

power, under such regulations as it may prescribe, to sell such bonds or warrants, for not less than par, and devote the moneys derived therefrom to the payment of the damages assessed or agreed upon for such property or the damages thereto.

Amd. Sec. 1, Ch. 46, L. 1927.

Under this section, before amendment, the city council had no power to issue bonds or warrants at a discount in payment of special improvement work; therefore a contract let to a person who added to his bid ten per cent of the actual cost, on the theory that the warrants he would receive were worth only ninety

cents on the dollar, was invalid as an attempt to do indirectly what the council was prohibited from doing directly. *Evans et al. v. City of Helena et al.*, 60 Mont. 577, 199 Pac. 445.

Agreement to pay in bonds as importing face or market value, note, 10 A. L. R. 835.

5251. Certification and collection of special assessments in cities and towns. It shall be the duty of the city or town treasurer of every city or town whose taxes for general, municipal and administrative purposes are certified to and collected by the county treasurer in accordance with the provisions of section 5216 of this code, immediately after the second Monday of August of each year, and at the same time the copy of resolution determining the annual levy for general taxes is certified by the city or town clerk to the county clerk as required by said section 5216, to certify to the county clerk of the county in which such city or town is situated all special assessments and taxes levied and assessed in accordance with any of the provisions of this act, and the county treasurer must collect the same in the same manner and at the same time as said taxes for general, municipal and administrative purposes are collected by him.

In every city or town which shall provide by ordinance for the collection of its taxes for general, municipal and administrative purposes by its city or town treasurer, such city or town treasurer shall collect all special assessments and taxes levied and assessed in accordance with any of the provisions of this act, in the same manner and at the same time as said taxes for general, municipal and administrative purposes are collected by him; and all of the provisions of section 5215 of this code shall apply to the collection of such special taxes and assessments in the same manner as such provisions apply to the collection of other city or town taxes. When one payment becomes delinquent all payments shall, at the option of the city or town council, by appropriate resolutions duly adopted become delinquent, and the whole property shall be sold the same as other property is sold for taxes.

Amd. Sec. 1, Ch. 156, L. 1925.

Cited in *Gagnon v. City of Butte*, 75 Mont. 279, 287, 243 Pac. 1085.

5257. Posting and publication of notices by clerk—Effect of errors in proceedings.

Under this section any error in or departure from the mode of publication of any notice incident to the creation of a special improvement district is insufficient to invalidate the proceedings, when

it appears that the notice was actually published for the time required by the act. *Aiken et al. v. City of Glendive et al.*, 60 Mont. 1, 197 Pac. 1003.

5259. Special improvement districts for lighting streets. The city or town council of any city or town is authorized to create special im-

provement districts embracing any street or streets or public highway therein, or portions thereof, and property adjacent thereto, or property which may be declared by said council to be benefited by the improvement to be made, for the purpose of lighting such street or streets or public highway, and to require not more than three-fourths ($\frac{3}{4}$) and no less than one-fourth ($\frac{1}{4}$) of the cost of installing and maintaining such lighting system to be paid by the owners of the property embraced within the boundaries of such districts, and to assess and collect such portion of such cost by special assessment against said property.

Amd. Sec. 1, Ch. 143, L. 1927.

5260. Proportion to be borne by abutting property. The portion of the entire cost of erecting and maintaining the posts, wires, pipes, conduits, lamps and other suitable or necessary appliances for the purpose of lighting said streets or public highways and of the annual cost of supplying electrical current for and maintaining the lights thereon in such districts, not less than one-fourth ($\frac{1}{4}$) nor more than three-fourths ($\frac{3}{4}$) as shall be determined by the city or town council, shall be borne by the property embraced within said district, and the city or town council for the purpose of making the assessment shall adopt one of the two (2) following methods:

(a) The city council shall assess the entire cost of such improvement against the entire district, each lot or parcel of land within such district to be assessed for that part of the whole cost which its area bears to the area of the entire district, exclusive of streets, avenues, alleys and public places; provided, however, that the city council, in its discretion, shall have the power to pay the whole or any part of the cost of any street, avenue or alley intersection out of any funds in its hands, available for that purpose, or to include the whole or any part of such costs within the amount of the assessment to be paid by the property in the district. In order to apportion the cost of any of the improvements herein provided for between the corner lot and the inside lots of any block, the council may, in the resolution creating any district, provide that whenever any of the improvements herein provided for shall be along any side street, or bordering or abutting upon the side of any corner lot of any block, that the amount of the assessment against the property in such district, to defray the cost of such improvements, shall be so assessed that each square foot of the land, embraced within any such corner lot, shall bear double the amount of the cost of such improvement that a square foot of any inside lot shall bear.

(b) The city council shall assess the cost of such improvements against the entire district, each lot or parcel of land within such district bordering or abutting upon the street or streets whereon or wherein the improvement has been made, in proportion to the lineal feet abutting or bordering the same; provided, however, that the city council, in its discretion, shall have the power to pay the whole or any part of the cost of any street, avenue or alley intersection, out of any funds in its hands, available for that purpose, or to include the whole or any part of such costs within the amount of the assessment to be paid by the property in the districts.

Amd. Sec. 2, Ch. 143, L. 1927.

5261. Resolution of intention—Procedure. Before creating any special improvement lighting district in any such city or town, for the purpose of lighting any street or streets or public highway, or section thereof, in accordance with the provisions of this act, the city council shall pass a resolution of intention so to do, which resolution shall designate the number of such district, describe the boundaries thereof, and state therein the general character of the improvement or improvements to be made and an approximate estimate of the cost thereof; also an approximate estimate of the cost of maintaining such lights and supplying electrical current therefor for the first (1st) year, and the proportion of such cost to be assessed against the property embraced within the district.

Upon having passed such resolution, the council must give notice of the passage of such resolution of intention, which notice of the passage of such resolution must be published for five (5) days in a daily newspaper or in some one issue of a weekly newspaper in the city or town, or in case no newspaper be published in such city or town, then by posting for five (5) days in three (3) public places in the city or town, and a copy of such notice shall be mailed to every person, firm or corporation having property within the proposed district, at his last known address, upon the same day such notice is first published or posted. Such notice must describe the general character of the improvement so proposed to be made and state the estimated cost thereof; also the estimated cost of maintaining the lights and supplying the electrical current therefor within such district for the first (1st) year, and designate the time when and the place where the council will hear and pass upon all protests that may be made against the making of such improvement or the creation of such district, and such notice shall refer to the resolution on file in the office of the city clerk for a description of the boundaries.

At any time within fifteen (15) days after the date of the first publication of the notice of passage of the resolution of intention, any owner of property liable to be assessed for said work may make written protest against the proposed work or against the extent or creation of the district to be assessed or both. Such notice must be in writing and be delivered to the said clerk of the city council, who shall indorse thereon the date of its receipt by him.

At the next regular meeting of the city council, after the expiration of the time within which said protests may be so made, the city council shall proceed to hear and pass upon all protests so made, and its decision shall be final and conclusive; provided, however, that when the protest is against the proposed work and the cost thereof is to be assessed upon property embraced within the boundaries of the district, and if the city council finds that such protest is made by the owners of a majority of the property embraced within the district to be assessed for the proposed work, no further proceedings shall be taken for a period of six (6) months from the date when said protest was received by the said city clerk of said city council.

In determining whether or not sufficient protest has been filed in a proposed district to prevent further proceedings therein, property owned by a county, city or town shall be considered the same as other property

in the district. The city council may adjourn said hearing from time to time.

When no protests have been delivered to the clerk of the city council within fifteen (15) days after the date of the first publication of the notice of the passage of the resolution of intention, or when a protest shall have been found by the city council to be insufficient or shall have been overruled, or when a protest against the extent of the proposed district shall have been heard and denied, immediately thereupon the city council shall be deemed to have acquired jurisdiction to order the proposed improvements; but before ordering any of said proposed improvements, the city council shall pass a resolution creating the special improvement lighting district in accordance with the resolution of intention theretofore introduced and passed by the city council.

The city or town council may cause the posts, wires, pipes, conduits, lamps or other suitable and necessary appliances, for the purpose of lighting said streets, to be procured and erected by contract or by the street commissioner, or by any other official of the city or town, in such way and manner as the council shall provide, and after such lighting system has been installed, may, by contract, in such way and manner as the council shall elect, cause the lights to be maintained thereon and electrical current furnished therefor; provided that the posts in any such district shall be of uniform size and character and shall be distributed uniformly upon the street or streets or public highways, or section thereof, to be lighted in any such district.

Amd. Sec. 3, Ch. 143, L. 1927.

5265. Resolution assessing cost—Notice—Hearing. It shall be the duty of the city or town council to ascertain the cost of installing such lighting system, and on or before the first Monday in October pass and finally adopt a resolution levying and assessing all of the property embraced within said district with not less than one-fourth ($\frac{1}{4}$) nor more than three-fourths ($\frac{3}{4}$) of the entire cost of installing the same; each lot or parcel of land in said district to be assessed in accordance with the method adopted by the city council as provided in section 5260 hereof. Any such resolution shall contain a list in which shall be described each lot or parcel of land, and either the total number of square feet of property contained therein or the total number of linear feet abutting the improvement as may be required to determine the total assessment in the district, and the amount levied against each lot or parcel of land set opposite. Such resolution, signed by the mayor and city clerk, shall be kept on file in the office of the city clerk, and a notice signed by the city clerk, stating that the resolution levying the assessment to defray the portion of the cost of installing and maintaining said lights and supplying electrical current therefor for the first (1st) year, as determined by the city or town council, is on file in his office subject to inspection for a period of five (5) days, shall be published at least once in a newspaper published in the city. Such notice shall state the time and place at which objections to the final adoption of such resolution shall be heard by the city or town council, and the time for such hearing shall not be less than five (5) days after the publication of such notice. At the time so fixed the council shall meet and hear all such ob-

jections and for the purpose may adjourn from day to day, and may modify such resolution in whole or in part. A copy of such resolution as finally adopted, certified by the city clerk, must be delivered within two (2) days after its passage to the city treasurer. All moneys derived from the collection of such assessments shall constitute a fund to be known as "special improvement lighting district No. fund."

Amd. Sec. 4, Ch. 143, L. 1927.

5266. Contract for maintenance—Assessments. The lights in each district shall be maintained by contract for such period of time and in such way or manner as the city or town council shall elect; provided, however, that the city or town council shall not let a contract for a period to exceed three (3) years. It shall be the duty of the city or town council to estimate, as nearly as practicable, the cost of maintaining such lights and furnishing electrical current therefor each year, and the portion thereof to be assessed against the property embraced within the district, and before the first Monday in October pass and finally adopt a resolution levying and assessing said property within said district with an amount equal to the proportion of the cost of such maintenance and electrical current so determined to be specially assessed against said property. Said resolution levying and assessing said portion of the cost of maintenance, and for furnishing electrical current therefor, shall be prepared and certified to in the same manner as the resolution provided for in the preceding section, and the same notice and hearing shall be given thereon, and shall be adopted and certified, and the assessment collected, in the same manner, as nearly as may be, as in the case of the resolution provided for in the preceding section. All moneys derived from the collection of the assessment provided for in such resolution shall be paid into a fund known as "special improvement lighting district No. maintenance fund" and the number of which shall correspond with the number of the lighting district, for the maintenance of and the supplying of electrical current for which the tax is levied, and such fund shall be used to defray the expense of maintaining and furnishing electrical current for the lights in said district, and for no other purpose. Provided, however, that the city or town council shall have the power not more than once in a year to change by resolution the boundaries and number of any maintenance district. Any special assessment levied and made for any purpose aforesaid, together with all costs and penalties, shall constitute a lien upon and against the property upon which assessment is made and levied, from and after the date of the final passage and adoption of the resolution levying the same; which lien can only be extinguished by payment of such assessment, with all penalties, costs and interest.

Amd. Sec. 7, Ch. 143, L. 1927.

5269. Petition for discontinuance district. If at any time after the creation of any special improvement lighting district a petition shall be presented to the city or town council, signed by the owners or agents of more than three-fourths ($\frac{3}{4}$) of the total amount of property embraced within the district, asking that the maintenance and operation of such special lighting system and the furnishing of electrical current therefor,

in such district, be discontinued, the city or town council shall thereupon, by resolution, provide for discontinuing the maintenance and operation of the lighting system; provided, however, that if the city or town council shall have, prior to the presentation of such petition, entered into any contract for the maintenance and operation of such lighting system, such maintenance and operation shall not be discontinued until after the expiration of the contract.

Amd. Sec. 5, Ch. 143, L. 1927.

5271. United States lands excepted. Whenever any lot, piece or parcel of land belonging to the United States, or mandatory of the government, shall be included within the boundaries of the proposed special improvement lighting district declared by the city or town council in its resolution of intention to be the district to be assessed to pay the costs and expenses thereof, said council shall, in the resolution of intention, declare that said lots, pieces or parcels of land, or any of them, shall be omitted from the assessment thereafter to be made to cover the costs and expenses of said work or improvement and the cost of said work or improvement which would have been assessed against said lots shall be paid by the city from its general fund.

Amd. Sec. 6, Ch. 143, L. 1927.

5272. Street sprinkling. Whenever the council of any city or town desires to sprinkle all or any part of the streets or avenues of its city or town with water, oil, salt, or any other dust pallative, as provided in this chapter, it shall provide, by ordinance, a method of doing said work, and of paying for the same under the following restrictions and regulations.

Amd. Sec. 1, Ch. 97, L. 1927.

Sections 5272-5275 were cited in *Griffith v. City of Butte et al.*, 72 Mont. 552, 562, 234 Pac. 829.

5276. Same—Method of assessment. The assessments for the cost and expense of sprinkling streets shall be made against all of the property embraced within each sprinkling district by one of the three following methods:

1. **Frontage basis.** Each lot or parcel of land within such district, abutting upon some street upon which sprinkling is done, shall be assessed for that part of the whole cost which its street frontage bears to the street frontage of the entire district.

2. **Area basis.** Each lot or parcel of land within such district shall be assessed for that part of the whole cost which its area bears to the area of the entire district, exclusive of streets, avenues, alleys and public places.

3. **Combination of frontage and area basis.** A portion of the total cost, to be assessed in each sprinkling district, may be assessed against the several lots or parcels of land within the district by Method No. 1 on a frontage basis, and the remainder of such cost by Method No. 2 on an area basis. The proportion to be assessed in each district by each such method shall be determined and fixed by the city or town council.

Amd. Sec. 2, Ch. 97, L. 1927.

CHAPTER 57.

MUNICIPAL BONDS—FUNDING DEBT.

5278. Creation of indebtedness—Submission to taxpayers.

Cited in *First Nat. Bank of Glendive v. Sorenson*, 65 Mont. 1, 8, 210 Pac. 900.

5283. Tax for interest and sinking fund—Place of payment.

An irregularity of the city council in making a levy of a special tax by resolution instead of by ordinance as required by this section did not render the tax invalid, since the irregularity did not injure any taxpayer. *First Nat. Bank of Glendive v. Sorenson*, 65 Mont. 1, 210 Pac. 900.

While under this section it is made the

duty of the city council to levy a tax each year for paying interest on its bonded indebtedness and creating a sinking fund, its power in that respect, in the absence of statutory provision, would be implied from the power given to create the indebtedness. *First Nat. Bank of Glendive v. Sorenson*, 65 Mont. 1, 210 Pac. 900.

5285. Funded debt. The council of any city or town having a floating indebtedness of five thousand dollars (\$5,000), or more, may fund the indebtedness and issue bonds with coupons attached thereto, as herein-after provided in this chapter.

Amd. Sec. 1, Ch. 61, L. 1927.

CHAPTER 63.

COMMISSION FORM OF GOVERNMENT.

5373. Laws governing city—Ordinances—Territorial limits and property.

This and the following section were cited as sections 8 and 9, chapter 57, L. 1911, in *State v. Dryburgh*, 62 Mont. 36, 45, 203 Pac. 508.

5380. City to be governed by mayor and councilmen.

Cited as section 15, chapter 57, L. 1911, in *State v. Dryburgh*, 62 Mont. 36, 45, 203 Pac. 508.

5384. Supervisory powers of mayor and councilmen—Election and removal of officers—Police judge.

Cited as section 19, chapter 57, L. 1911, in *State v. Dryburgh*, 62 Mont. 36, 45, 203 Pac. 508.

5390. Civil service.

The chief of the fire department of a city operating under the commission form of government was removed by the council, his name, however, being restored to the roll of members, thus entitling him to the safeguards afforded him as such member under the civil service rules of the Firemen's Act. He later was suspended under this section, but a hearing on his appeal was not accorded him. Held, that failure to hear his appeal rendered the order of suspension of no effect, automatically reinstated him, and entitled him to compensation during the period of his suspension. *State v. Dryburgh*, 62 Mont. 36, 203 Pac. 508.

Where an acting chief of police merely recommended to the council that a police officer be removed from office, but did not actually suspend or discharge him in conformity with this section, there was no order from which he could appeal, and his attempted appeal was ineffectual for any purpose. *State ex rel. Lease v. Wilkinson et al.*, 59 Mont. 327, 196 Pac. 878.

Where a city council itself preferred charges against a police officer, conducted a trial ex parte, determined the guilt of the accused, discharged him from office, and then for the first time gave him notice that charges had been pre-

ferred and that he was dismissed, in disregard of the course prescribed by this section, its action was illegal and the officer was entitled to reinstatement. *State ex rel. Lease v. Wilkinson et al.*, 59 Mont. 327, 196 Pac. 878.

A police officer may be suspended or discharged for neglect of duty or disobedience of orders by the chief of police under this and following sections, subject to review by the superintendent of the police department, from whose order of

approval the accused may appeal to the city council; or by the council under sections 5099, 5100, upon charges filed with it, a copy of which must be furnished to him, after a trial had on at least two days' notice. *State ex rel. Lease v. Wilkinson et al.*, 59 Mont. 327, 196 Pac. 878.

Cited as section 25, chapter 57, L. 1911, in *State v. Dryburgh*, 62 Mont. 36, 45, 203 Pac. 508.

CHAPTER 64.

COMMISSION-MANAGER PLAN OF GOVERNMENT.

5404. Mayor to transmit certificate. If such proposition is adopted, the mayor shall transmit to the governor, to the secretary of state and to the county clerk and recorder, each a certificate stating that such proposition was adopted.

If such proposition shall not be adopted at such special election, such proposition shall not again be submitted to the electors of such municipality within a period of two years from the date of the last submission.

Amd. Sec. 1, Ch. 31, L. 1923.

5405. Special election—Proclamation and calling. If the majority of the votes cast at such election shall be in favor of such proposition, the city or town council must hold a meeting within one week thereafter and at such meeting order a special election to be held for the purpose of electing the number of commissioners to which such municipality shall be entitled, which order shall specify the time of holding such election, which must be within ninety days after the making of such order, and the mayor shall thereupon issue a proclamation setting forth the purpose for which such special election is held and the day of holding the same, which proclamation shall be published for ten successive days in each daily newspaper published in such municipality if there be such, otherwise for two successive weeks in each weekly newspaper published therein, and a copy thereof shall also be posted at each voting place within said municipality and also in five of the most public places in said municipality.

Amd. Sec. 2, Ch. 31, L. 1923.

5409. Powers of municipalities under commission-manager plan.

For discussion of authority of cities to impose license tax under the police power, reasonableness of license sched-

ules, etc., see *City of Bozeman v. Nelson*, 73 Mont. 147, 237 Pac. 528.

5411. Terms of office of commissioners—Elections, when held. The commissioners elected at the first election shall qualify and their terms of office shall begin on the first Monday after their election, and the terms of office of the mayor and councilmen or aldermen in such city or town in office at the beginning of the term of office of the commissioners first elected under the provisions of this act shall cease and terminate, and the terms of office of all of their appointed officers, and of all of

the employees of such city or town, shall cease and terminate as soon as the commissioners shall by resolution declare.

All commissioners shall serve for a term of four years and until their successors are elected and have qualified; except that at the first election the two candidates having the highest number of votes shall hold office for a period of four years, less the time elapsed since the thirty-first day of December of the odd-numbered year last preceding. The terms of office of all other candidates shall expire on the thirty-first day of December in any odd-numbered year following the special election provided for in this act, at which the first commissioners are elected.

If any city or town, having adopted the plan of government provided for by this act in the year 1921, shall have held no election to fill the vacancy caused by the expiration of the term of the commissioner whose term of office expired on the first day of January, 1922, then at the election held in such city or town in November, 1923, there shall be elected three commissioners. The term of office of the commissioner elected by the smallest number of votes at such election shall expire on the thirty-first day of December, 1925, and the terms of the other two shall expire on the thirty-first day of December, 1927.

Amd. Sec. 3, Ch. 31, L. 1923.

5413. Qualifications of commissioners—Forfeiture of office—Limitations. Members of the commission shall be residents of the city or town and have the qualifications of electors, and own real estate situated therein to the assessed value of not less than one thousand dollars. Commissioners and other officers and employees shall not hold any other public office or employment, except in the state militia, as school trustees, or notary publics [notaries public], and shall not be interested in the profits or emoluments of any contract, job, work, or service for the municipality. Any commissioner who shall cease to possess any of the qualifications herein required, shall forthwith forfeit his office, and any such contract in which any member is or may be interested, may be declared void by the commission.

No commissioner or other officer or employee of said city or town shall accept any frank, free ticket, pass or service directly or indirectly, from any person, firm or corporation upon terms more favorable than are granted to the public generally. Any violation of the provisions of this section shall be a misdemeanor and shall also be sufficient cause for the summary removal or discharge of the offender. Such provisions for free service shall not apply to policemen or firemen in uniform or wearing their official badges, where the same is provided by ordinance, nor to any commissioner, nor to the city manager, nor to the city attorney, upon official business, nor to any other employee or official of said city on official business who exhibits written authority signed by the city manager.

Amd. Sec. 4, Ch. 31, L. 1923.

5415. Ballots—Form—Voting—Qualifications voters—Challenges—Returns. All ballots used in all elections held under authority of this act shall be without party mark or designation. The ballots shall be printed on plain, substantial white paper.

Except that the crosses here shown shall be omitted, and that in place of the names of persons here shown, there shall appear the names of the persons who are candidates for nomination, the primary ballots shall be substantially as hereinafter designated. Primary, regular and special election ballots provided under authority of this act for the nomination or election of commisisoners shall not bear the name of any person or persons or any issue other than those of candidates for the nomination or election to the office of commissioner.

Official Primary Ballot.

Vote for (insert here a number equal to the number of persons to be elected to the office of commissioner at the next regular municipal election.)

If you wrongly mark, tear or deface this ballot, return it and obtain another.

Candidates for nomination to the office of commissioner at the primary election.

<input checked="" type="checkbox"/>	John Doe
<input checked="" type="checkbox"/>	Henry Smith
<input checked="" type="checkbox"/>	George Jones
<input checked="" type="checkbox"/>	James Richards
<input checked="" type="checkbox"/>	Richard Doe

Official Ballot Attest:

(Signature)

Clerk of the Commission.

Having caused said ballots to be printed, the clerk of the commis- sion shall cause to be delivered at each polling place a number of said ballots, the per cent in excess of the number of such voters registered in such polling place at the last general municipal election. The persons who are qualified to vote at the general election, shall be qualified to vote at such primary election, and any person offering to vote, may be orally challenged by any elector of the municipality upon any or all grounds set forth and specified in section 706 of the Revised Codes of Montana of 1921, and the provisions of sections 707, 708, 709, 710, 711, 712, 713, and 714 of the Revised Codes of Montana, 1921, shall apply at all chal- lenges made at such election. Judges of election shall immediately upon the closing of the polls, count the ballots and ascertain the number of such votes cast in such precinct for each of the candidates, and make return thereof to the clerk of the commission upon proper blanks to be furnished by the clerk of the commission within twelve hours of the closing of the polls. Not later than the first legal day after he shall have received such returns, the clerk of the commission shall canvass said returns so received from all the polling precincts and shall make and publish in all the newspapers in said municipality, at least once, the

result thereof. Said canvass by the clerk of the commission shall be made publicly.

The candidates for nomination to the office of commissioner who shall have received the greatest vote in such primary election shall be placed on the ballot at the next regular municipal election, in number not to exceed double the number of vacancies in the commission to be filled.

Except as otherwise in this act provided all electors of municipalities under this act, who, by ordinances governing cities and towns incorporated under the general municipal incorporation law, or by charter, would be entitled to vote for the election of officers at any general municipal election in such cities or towns, shall be qualified to vote at all elections under this act; and the ballots to be used at such general municipal elections, shall be in the same general form as for such primary election so far as applicable, and in all elections in such municipalities, the election precincts, voting places, method of conducting the elections, canvassing of votes and announcing the results, shall be the same as by law provided for the election of officers in such cities or towns so far as the same are applicable and not inconsistent with the provisions of this act.

Amd. Sec. 5, Ch. 31, L. 1923.

5418. Candidate's expense accounts—Penalties. Every candidate for commissioner shall, within thirty (30) days after the election, file with the clerk of the commission his sworn statement of all his election and campaign expenses, and by whom such funds were contributed.

Any violation of the provisions of this section, shall be a misdemeanor and if committed by a successful candidate, give ground for the removal from office.

Amd. Sec. 6, Ch. 31, L. 1923.

5442. Preliminary authority commissioners—Qualifications voters. In case a petition be filed requiring that a measure passed by the commission providing for an expenditure of money, a bond issue, or a public improvement be submitted to a vote of the electors, all steps preliminary to such expenditure, actual issuance of the bonds, or actual execution of the contract for such improvement, may be taken prior to the election; and at such election only resident taxpayers of such city or town whose names as such appear upon the assessment-roll and who are also qualified electors of said city or town, shall be entitled to vote at such election. And at any and all elections in such city or town at which questions relating to bond issues, tax levies, or the expenditure of money shall be submitted, no person shall be entitled to vote unless qualified as in this section provided.

Amd. Sec. 7, Ch. 31, L. 1923.

5443. Commissioner's oath and bond—Premium. Every person who has been declared elected commissioner, shall within ten (10) days thereafter take and file with the clerk of the commission his oath of office in the form and manner provided by law, and shall execute and give sufficient bond to the municipal corporation in such sum as the judge of the

district court of the county in which such municipality is situated, not, however, exceeding \$5,000 for commissioners in cities of the first class and \$3,000 for commissioners in all other cities and towns, conditioned for the faithful performance of the duties of his office, which bond shall be filed with the clerk and recorder of the county in which such municipality is situated. The premium on such bond as may be required, shall be paid by the municipality.

Amd. Sec. 8, Ch. 31, L. 1923.

5444. Mayor—Duties—Vacancies—Procedure on tie vote. The mayor shall be that member of the commission, who, at the regular municipal election at which the commissioners were elected, received the highest number of votes. In case two candidates receive the same number of votes, one of them shall be chosen mayor by the remaining members of the commission. In event of a vacancy in the office of the mayor, by the expiration of his term of office, the holdover commissioner having received the highest number of votes shall be the mayor. In the event there is a vacancy in the office of the mayor for any other cause, the remaining members of the commission shall choose his successor for the unexpired term from their own number by lot. The mayor shall be the presiding officer, except that in his absence, a president pro tempore may be chosen. The mayor shall exercise such powers conferred, and perform all duties imposed upon him by this act, the ordinances of the municipality and the laws of the state, except that he shall have no power to veto any measure. He shall be recognized as the official head of the municipality by the courts for the purpose of serving civil processes, by the governor for the purposes of the military law, and for all ceremonial purposes.

Amd. Sec. 9, Ch. 31, L. 1923.

5448. Meetings of commissioners—Absences. At ten o'clock A. M. on the first Monday after the first day of January, following a regular municipal election, the commission shall meet at the usual place for holding the meetings of the legislative body of the municipality, at which time the newly elected commissioners shall assume the duties of their office. Thereafter, the commissioners shall meet at such times as may be prescribed by ordinance or resolution, except that in municipalities having less than five thousand inhabitants, they shall meet regularly at least once and not more than four times per month, and in municipalities having more than five thousand inhabitants, they shall meet not less than once every two weeks. Absence from five (5) consecutive regular meetings shall operate to vacate the seat of a member, unless such absence be authorized by the commission.

The commissioner acting as mayor, any two members of the commission or the city manager, may call special meetings of the commission upon at least twelve (12) hours' written notice to each member of the commission, served personally on each member or left at his usual place of residence. All meetings of the commission shall be public and any citizen shall have access to the minutes and records thereof at all rea-

sonable times. The commission shall determine its own rules and order of business and shall keep a journal of its proceedings.

Amd. Sec. 10, Ch. 31, L. 1923.

5449. Ordinance and resolutions—Form and passage. Each proposed ordinance or resolution shall be introduced in written or printed form, and shall not contain more than one subject, which shall be clearly stated in the title; but general appropriation ordinances may contain the various subjects and accounts for which moneys are to be appropriated. The enacting clause of all ordinances passed by the commission shall be, "Be it ordained by the commission of the (city or town) of (name of city or town)." The enacting clause of all ordinances submitted by the initiative shall be, "Be it ordained by the people of the (city or town) of (name of city or town)."

No ordinance, unless it be declared an emergency, shall be passed on the day on which it shall have been introduced, unless so ordered by an affirmative vote of four-fifths of the members of the commission in cities with five commissioners and two-thirds of the members of the commission in all other cities and towns. Every ordinance or resolution passed by the commission shall be signed by the mayor or two members, and filed with the clerk within two days, and by him recorded.

No ordinance or resolution or section thereof shall be revised or amended, unless the new ordinance or resolution contains the entire ordinance or resolution or section revised or amended.

Amd. Sec. 11, Ch. 31, L. 1923.

5465. Department of public safety. Subject to the supervision and control of the city manager in all matters, the director of public safety shall be the executive head of the division of police and fire. He shall also be the chief administrative authority in all matters affecting the inspection and regulation of the erection, maintenance, repair and occupancy of buildings as may be ordained by the commission or established by the general law of the state of Montana. He shall also be charged with the enforcement of all laws and ordinances relating to weights and measures.

The chief of police shall have exclusive control of the stationing and transfer of all patrolmen and other officers and employees constituting the police force, under such rules and regulations as the director of public safety may prescribe. The provisions of sections 5095 to 5108, both inclusive, Revised Codes of Montana 1921, and of section 5007, Revised Codes of Montana 1921, shall not be applicable to cities and towns operating under the plan of government provided for in this act. The police force shall be composed of a chief of police and such officers, patrolmen and other employees as the city manager may from time to time determine. In case of riot, emergency, at time of elections or similar occasions, the director of public safety may appoint additional patrolmen and officers for temporary service who need not be in the classified service.

No person shall act as special policeman, special detective or other special police officer for any purpose whatsoever, except upon the written authority of the director of public safety. Such authority shall be ex-

exercised only under the direction and control of the chief of police and for a specified time.

The fire chief shall have exclusive control of the stationing and transfer of all firemen and other officers and employees constituting the fire force under such rules and regulations as the director of public safety may prescribe. The fire force shall be composed of a chief and such other officers, firemen and employees as the city manager may from time to time determine. In case of riot, conflagration or emergency, the director of public safety may appoint additional firemen and other officers for temporary service who need not be in the classified service.

The chief of police and fire chief shall have the right to suspend any of the officers and employees in the police and fire department, who may be under their management and control, for incompetency, neglect of duty, immorality, drunkenness, failure to obey orders given by proper authority or for any other just and reasonable cause. When such suspension is made, the chief of police or fire chief shall forthwith report such suspension in writing to the director of the department of public safety, together with the facts and reasons for such suspension. Upon receipt of said notice the director of public safety shall fix a date and time for hearing such suspension, which shall be within thirty days from the receipt of such notice, and cause to be given to the person suspended and the officer suspending at least three days' notice thereof. Upon a hearing of said matter before the director of public safety, he shall be authorized to administer oaths, take testimony and to render a decision thereon either sustaining the order of suspension or overruling the same. An appeal may be taken within ten days from the date of judgment from said decision of the director of public safety to the city manager by the party suspended or the officer making the suspension. If no appeal is taken, the judgment rendered by the director of public safety shall be final, except that the city manager shall in all cases have the authority to remove any employee or officer of the police or fire department. If an appeal is taken to the city manager, he shall fix a date and time for hearing the same within thirty days of the receipt of such notice of appeal and give at least three days' notice thereof to the parties, and he shall have the right to swear witnesses, take testimony and render judgment therein and his judgment shall be final.

The city manager shall have the exclusive right to suspend or dismiss the chief of police and the fire chief for incompetence, neglect of duty, immorality, drunkenness, failure to obey orders given by proper authority, or for any other just and reasonable cause. If either of such chiefs be so suspended or dismissed, the city manager shall forthwith certify the fact, together with the cause of suspension or dismissal to the commission, who, if demand therefor be made by the person so suspended or dismissed within five (5) days from the date of receipt of such notice, shall proceed to hear such charges and render judgment thereon, which judgment shall be final.

The commission may provide by general ordinance for the relief out of the police or fire funds of members of the division of police and fire temporarily or permanently disabled in the discharge of their duty. Nothing herein shall impair, restrict or repeal any provision of general

law authorizing the levying of taxes to provide for firemen, police and sanitary police pension funds, and to create and perpetuate boards of trustees for the administration of such funds.

Amd. Sec. 12, Ch. 31, L. 1923; Amd. Sec. 1, Ch. 173, L. 1925.

5466. Duties of the department and director of finance. Department of finance. The duties of the director of finance shall include the keeping and supervision of all accounts and the custody of all public money of the municipality; the purchase, storage and distribution of supplies needed by the various departments; the making and collection of special assessments; the issuance of licenses; the collection of license fees and taxes and such other duties as the commission may, by ordinance, require.

He shall install and have supervision over the accounts of all the departments and officers of the municipality. Whenever practicable the books of financial accounts shall be kept in the office of the department of finance. He shall require daily departmental reports of money receipts and the disposition thereof; and shall require of each, in such form as may be prescribed, current financial and operating statements exhibiting each transaction and the cost thereof.

Upon the death, resignation, removal or expiration of the term of any officer, he shall examine the accounts of such officer and report his findings to the city manager.

Accounting procedure shall be devised and maintained for the municipality adequate to record in detail all transactions affecting the acquisition, custodianship and disposition of values, including cash receipts and disbursements; and the recorded facts shall be presented periodically to officials and to the public in such summaries and analytical schedules in detailed support thereof as may be necessary to show the full effect of such transactions for each fiscal year upon the finances of the municipality and in relation to each department of the municipal government, including distinct summaries and schedules for each utility publicly owned and operated.

He shall have charge of the preparation and certification of all special assessments for public improvements; the mailing of notices of such assessments to property owners and all other duties connected therewith; the collection of such assessments as are payable directly to the municipality and the preparation and certification of all unpaid assessments to the county treasurer for collection. He shall issue all licenses and collect all fees therefor and shall pay the same into the treasury in the manner provided by ordinance.

No warrant for the payment of any claims shall be issued unless such claim shall be evidenced by a voucher approved by the head of the department for which the indebtedness was incurred and countersigned by the city manager. Before issuing such voucher, the supplies and material delivered, or work done, shall be duly inspected and certified to by the head of the proper department or office or by a person designated by him. The head of each department or office shall require proper time reports from all service rendered to be certified by those having cognizance thereof, to serve as a basis for the preparation of pay-roll vouchers. Each director of a department and his surety shall be liable to the municipality

for all loss or damage sustained by the municipality, by reason of the negligent or corrupt approval of any claim against the municipality in his department. Prior to the drawing of a warrant for the payment of any voucher or claim, the director of finance may at his discretion cause an investigation or inspection to be made by a person designated by him, and shall have power to summon persons and examine them under oath or affirmation, which oath or affirmation he may administer.

The director of finance shall be the custodian of all public money of the municipality and all other public money coming into his hands. He shall keep and preserve such money in the place or places determined by ordinance or by the provisions of any law applicable thereto. Except as otherwise provided in this act he shall collect, receive and disburse all public money of the municipality upon warrant, and shall also receive and disburse all other public money coming into his hands in pursuance of such regulations as may be prescribed by the authorities having lawful control over such funds.

The director of finance or city manager shall, in manner provided by ordinance, purchase all supplies for the municipality, sell all real and personal property of the municipality not needed or unsuitable for public use or that may have been condemned as useless by the director of a department. He shall have charge of such storerooms and storehouses of the municipality as may be provided by ordinance, in which shall be stored all supplies and materials purchased by the municipality and not delivered to the various departments.

He shall inspect all supplies delivered to determine quality and quantity and conformance with specifications, and no voucher shall be honored unless the accompanying invoice shall be indorsed as approved.

He may require from the director of each department at such times as contracts for supplies are to be let, a requisition for the quantity and kind of supplies to be paid for from the appropriations of the department.

Upon certification that funds are available in the proper appropriations, such goods shall be purchased and shall be paid for from funds in the proper department for that purpose. However, this procedure shall not prejudice the director of finance or city manager from purchasing goods for cash to the credit of the stores account, to be furnished the several departments on requisition, goods so furnished to be paid for by the department furnished therewith by warrant made payable to the stores account.

He shall not furnish any supplies to or purchase any supplies for any department unless there be to the credit of such department an available appropriation balance in excess of all unpaid obligations sufficient to pay for such supplies.

Before making any purchase or sale, the director of finance or city manager shall give opportunity for competition, all proposals to be upon precise specifications, and under such rules and regulations as the commission shall establish. Each order of purchase or sale to be approved and countersigned by the city manager or his deputy.

In cases of emergency purchases may be made without competition, if a sufficient appropriation has theretofore been made against which purchases may lawfully be charged. In such cases, a copy of the order

issued, shall be filed with the director of finance, together with a certificate by the head of the department, stating the facts of the emergency. A copy of this certificate shall be attached to and filed with the voucher covering payment for the supplies. The director of finance shall have such assistants and force of office employees as may be necessary to properly carry out his duties under the provisions of this act. If it is found desirable, he may divide his office into divisions presided over by the following officers: Accountant, treasurer and purchasing agent.

Amd. Sec. 13, Ch. 31, L. 1923.

5470. Police judge. The commission shall appoint a police judge who shall have the power and authority now conferred by existing laws and shall hold his office at the will of the commission.

Amd. Sec. 14, Ch. 31, L. 1923.

5471. Civil service board—Appointment and organization. The commission may appoint three electors of the municipality as a civil service board; one to serve for two years, and one for four years and one for six years, to take office on the first day of January after the municipality comes under the provisions of this act, or as soon thereafter as appointed and qualified. Thereafter members of the civil service board shall be appointed to serve for six years and until their successors have been appointed and have qualified. Members of the board shall not hold any other public office. The commission may remove any member of the board upon stating in writing the reasons for removal and allowing him an opportunity to be heard in his own defense. Any vacancy shall be filled by the commission for the unexpired term.

Immediately after appointment, the board shall organize by electing one of its members chairman. The board shall appoint a chief examiner who shall also act as secretary. The board may appoint such other subordinates as may by appropriation be provided for. It is intended hereby that the establishment of a civil service board shall be permissive and not mandatory. If appointed the board may be abolished at any time upon resolution to that effect by the commission and thereafter any civil service board appointed under the provisions of this act shall cease to exist, but so long as any such civil service board shall exist its operations and proceedings shall be controlled as in this act hereinafter provided.

Amd. Sec. 15, Ch. 31, L. 1923.

5487. Plat of lots—Survey and filing. Any owner of the lots or grounds within the municipality who subdivides or lays them out for sale, must cause to be made an accurate survey and plat thereof, conforming in all things to the provisions of section 4980 to 4993, inclusive, of this code, and shall also file with the clerk of the commission a duly certified copy of such plat or plats.

Amd. Sec. 16, Ch. 31, L. 1923.

5502. Fiscal year—Submission of budget. The fiscal year of the municipality shall begin on the first day of January. On or before the fifteenth day of January of each year, the city manager shall submit to

the commission an estimate of the expenditures and revenues of the municipal departments for the ensuing year. The estimate shall be compiled from detailed information obtained from the several departments on uniform blanks to be furnished by the city manager. The classification of the expenditures shall be as nearly uniform as possible for the main functional divisions of all departments and shall give in parallel columns the following information:

(a) A detailed estimate of the expenses of conducting each department as submitted by the department;

(b) Expenditures for corresponding items for the last two fiscal years;

(c) Expenditures for the corresponding items for the current fiscal year, including adjustments due to transfers between appropriations plus an estimate of expenditure necessary to complete the current fiscal year;

(d) Amount of supplies and materials on hand at the date of the preparation of the invoice;

(e) Increase or decrease of requests compared with the corresponding appropriations for the current year;

(f) Such other information as is required by the commission or that the city manager may deem advisable to submit;

(g) The recommendation of the city manager as to the amounts to be appropriated with reasons therefor in such detail as the commission may direct.

A sufficient number of copies of such estimate shall be prepared and submitted, that there may be copies on file in the office of the commission for inspection by the public.

Amd. Sec. 17, Ch. 31, L. 1923; Amd. Sec. 2, Ch. 173, L. 1925.

5503. Appropriation ordinance—Details concerning. Upon receipt of such estimate, the commission shall prepare an appropriation ordinance in such form as may be prescribed by ordinance or resolution. Before finally acting upon such tentative appropriation, the commission shall fix a time and place for holding public hearings upon the tentative appropriation, and shall give public notice of such hearing. Following the public hearings and before its final passage, the appropriation ordinance shall be published with a parallel comparison with the recommendation of the city manager. The commission shall not pass the appropriation ordinance until ten days after its publication, nor before the first Monday in February.

Amd. Sec. 3, Ch. 173, L. 1925.

5507. Determination salaries city manager and employees. The commission shall fix by annual salary ordinances the salary or compensation of the city manager, the heads of the departments and its own employees.

The city manager shall fix the number and salaries or compensation of all other officers and employees.

In cities where there is a civil service board as provided for in this act, the salary or compensation so fixed shall be uniform for like service in each grade of the service as the same shall be graded or classified by the city manager in accordance with the rules and regulations adopted

by the civil service board. All such salaries and rates of pay, shall be reported to the secretary of the civil service board. All fees and moneys received or collected by officers and employees shall be paid into the city treasury.

Amd. Sec. 18, Ch. 31, L. 1923; Amd. Sec. 4, Ch. 173, L. 1925.

5515. Laws continued in force. Except as otherwise in this act provided, all acts and parts of acts and all laws now in force or hereafter enacted relative to municipal corporations, are hereby continued in full force and effect and shall be considered and construed as not repealed by this act, except in so far as the same may be in conflict or inconsistent with the provisions of this act.

Amd. Sec. 19, Ch. 31, L. 1923.

5516. Exceptions to repealing clause. All laws and parts of laws in conflict herewith are hereby repealed; provided, however, that this act shall not repeal or modify any of the provisions of an act approved March 4, 1913, entitled, "An act making the board of railroad commissioners of the state of Montana ex officio a public service commission for the regulation and control of certain public utilities, etc.," or any amendment or amendments of said act, or section 6645 of the Revised Codes of Montana of 1921, and neither shall this act in any manner curtail or impair the power or authority of said public service commission and any order made, action taken, or regulation provided, by said commission shall supersede and nullify any order, regulation, ordinance or other action authorized by this act in conflict with any such order, regulation, or action, of said public service commission; provided, that the annual report relating to the operation of any public utility owned by any municipality operating under the provisions of this act, to be made to said public service commission, shall conform to the fiscal year of such city or town as established by this act.

Amd. Sec. 20, Ch. 31, L. 1923.

CHAPTER 64A.

MERGER OF COUNTY AND CITY GOVERNMENT.

5520.1. Merger of county and city government authorized. The separate corporate existence and government of any county and of each and every city and town therein may be abandoned and terminated and such county and each and all of the cities and towns therein may be consolidated and merged into one municipal corporation and government under this act by proceeding as hereinafter provided.

En. Sec. 1, Ch. 121, L. 1923.

For text treatment of this subject see vol. 18 Cal. Jur. 703.

5520.2. Question, how submitted. The question of the abandonment and termination of the separate corporate existence and government of a county and of each and every city and town therein and the consolidation and merging of the existence and government of such county and each and all of the cities and towns therein into one municipal corpora-

tion and government, under the provisions of this act, shall be submitted to the qualified electors of such county if a petition be filed in the office of the county clerk of such county, signed by at least twenty per centum (20%) of the electors of said county whose names appear on the official register of voters of the county on the date of the filing of such petition, requesting that such question be submitted to the qualified electors of the county.

En. Sec. 2, Ch. 121, L. 1923.

5520.3. Form and certification of petition—Special election. Such petition shall be substantially in the form and shall be signed, verified and filed in the manner prescribed in this act for initiative, referendum and recall petitions, and shall designate therein the name by which such consolidated government is to be known, which must be either that of the county or of some one of the cities or towns therein. If the county clerk shall find that such petition, or amended petition, so filed, is signed by the required number of qualified electors he shall so certify to the board of county commissioners of such county at their next regular meeting, and such board shall thereupon, and within ten days after receiving the clerk's certificate, order a special election to be held at which election such question shall be submitted to the qualified electors of the county. Such order shall specify the time when such election shall be held, which shall be not less than ninety nor more than one hundred and twenty days from and after the day when such order is made, and the board of county commissioners shall immediately upon making such order issue a proclamation setting forth the purpose for which such special election is held and the date of holding the same, which proclamation must be published and posted in the manner prescribed by section 535 Revised Codes of Montana of 1921.

En. Sec. 3, Ch. 121, L. 1923.

5520.4. Form of ballots. At such election the ballots to be used shall be printed on plain white paper, shall conform as nearly as possible to the ballots used on general elections, and shall have printed thereon the following.

"Shall the corporate existence and government of the County of and of each and every city and town therein be consolidated and merged into one municipal corporation and government under the provisions of Chapter (giving the number of this Act), Acts of the Eighteenth Legislative Assembly of the State of Montana, to be known and designated as 'City and County of'?"

☐ YES.

☐ NO.

Such election shall be conducted, vote returned and canvassed and result declared in the same manner as provided by law in respect to general elections.

En. Sec. 4, Ch. 121, L. 1923.

5520.5. Special election — Proclamation — Nominations. If the majority of the votes cast at such election shall be in favor of such consolidation and merging, the board of county commissioners of such county must, within two weeks after such election returns have been canvassed, order a special election to be held for the purpose of electing the number of members of the commission to which such consolidated municipality shall be entitled, which order shall specify the time when such election shall be held, which shall be not less than ninety nor more than one hundred and twenty days from and after the day when such order is made, and the board of county commissioners, immediately upon making such order, shall issue a proclamation setting forth the purpose for which such special election is held and the date of holding the same, which proclamation must be published and posted in the manner prescribed by section 535, Revised Codes of Montana, 1921; provided, however, that if any general election is to be held in such county after three months but within six months from the date of the making of such order then such order shall require such special election to be held at the same time as such general election. No primary election shall be held for the purpose of nominating candidates for members of the commission hereinafter provided for, to be voted for at such special election, but such candidates shall be nominated directly by petition which shall be in substantially the same form and be signed by the same number of signers as hereinafter required for primary nominating petitions. Such election shall be conducted, vote returned and canvassed and result declared in the same manner as provided by law in respect to general elections.

En. Sec. 5, Ch. 121, L. 1923.

5520.6. Powers of consolidated municipality. The inhabitants of every consolidated municipality organized under the provisions of this act, as its limits are at the time of such organization, or as they may be thereafter established as provided by law, shall be a body politic and corporate under the designation and name as adopted at the election providing for such consolidation and merging, and as such shall have perpetual succession; may use a corporate seal; may sue and be sued; may contract and be contracted with; may acquire property within or without the boundaries of the municipality for any municipal purpose, in fee simple, or lesser interest or estate, by purchase, gift, devise, appropriation, lease or lease with privilege of purchase, and may sell, lease, hold, manage and control such property as the interest of the municipality may require; levy and collect such taxes as are authorized by this act or by the general laws of the state; and, except as otherwise provided in this act, such municipality shall have and may exercise all other powers that are now or hereafter may be conferred on counties, cities and towns by the laws of this state. All powers of the municipality, whether expressed or implied, shall be exercised and enforced in the manner prescribed in this act, or in the general laws of the state, or when not so prescribed, then as may be prescribed by ordinance or resolution of the commission.

En. Sec. 6, Ch. 121, L. 1923.

5520.7. Commission—Number—Term—Vacancies—Qualifications. Except as otherwise provided in this act all powers of the consolidated municipality shall be vested in a commission, and for the purpose of determining the number of members composing such commission, consolidated municipalities organized under the provisions of this act shall be classified and all of the provisions of sections 4741 and 4742 of the Revised Codes of Montana of 1921, governing and controlling the classification of such consolidated municipalities. In consolidated municipalities of the first class such commission shall consist of seven members; in consolidated municipalities of the second, third and fourth classes of five members; and in consolidated municipalities of the fifth, sixth, seventh and eighth classes of three members. The term of office of members of the commission shall be four years and shall commence on the first day of July following their election; provided, however, that the terms of office of the members first elected at such special election shall commence on the first day of the third month following their election, and the terms of office of a majority of such members first elected, to be determined by lot, shall expire on the last day of June in the first year following their election, and the terms of the remaining members first elected shall expire on the last day of June in the third year following their election. If a vacancy occur in the commission, except as the result of a recall election, some eligible person shall be chosen by a majority vote of the remaining members to fill the place for the unexpired term. Members of the commission must be qualified electors of the consolidated municipality and must be the owners of real estate situated therein to the value of not less than one thousand dollars, and shall not hold any other public office except that of notary public or member of the state militia. A member of the commission ceasing to possess any of the qualifications specified in this section shall immediately forfeit his office.

En. Sec. 7, Ch. 121, L. 1923.

5520.8. Meetings and organization of commission. At 2 o'clock P. M. on the last day of June following a regular municipal election the commission shall meet at the courthouse in the consolidated municipality and the newly elected members shall assume the duties of office; provided, however, that the first meeting of such commission, after the special election at which the first members of the commission are elected, shall be held at two o'clock P. M. on the first day of the third month following such special election, and at such meeting the members of such commission shall determine by lot the members whose terms will expire on the last day of June in the first year following such special election and the members whose terms will expire on the first day of July in the third year following such election. Thereafter the commission shall meet at such times as may be prescribed by ordinance or resolution, but not less frequently than once in each month. Special meetings shall be called by the clerk of the commission upon written request of the president, the manager, or a majority of the members of the commission. Any such notice shall state the subject to be considered at the meeting and no other subject shall be considered at such meeting. All meetings of the commission, and of committees thereof, shall be open to the public and the

rules of the commission shall provide that citizens of the municipality shall have a reasonable opportunity to be heard at any such meeting in regard to any matter considered thereat.

En. Sec. 8, Ch. 121, L. 1923.

5520.9. Commission to make rules—Expulsion members. The commission shall determine its own rules and order of business and shall keep a journal of its proceedings. It shall have power to compel the attendance of absent members, may punish its members for disorderly behavior and, by vote of not less than two-thirds of its members, may expel a member for disorderly conduct or the repeated violation of its rules; but no member shall be expelled unless notified of the charge against him and given an opportunity to be heard.

En. Sec. 9, Ch. 121, L. 1923.

5520.10. Election officers—Powers of president. At the first meeting of the commission following the special election at which the members thereof are first elected and thereafter at its meeting on the first day of July following each general election at which members of the commission are elected, the commission shall choose one of its members as president and another as vice-president. The president shall preside at meetings of the commission and shall exercise the powers and perform the duties conferred and imposed by this act and the ordinances of the municipality. He shall be recognized as the official head of the municipality for all ceremonial purposes, by the courts for serving civil processes, and by the governor for purposes of military law. In time of public danger or emergency he shall, if authorized by vote of the commission, take command of the police, maintain order and enforce the law. If a vacancy occur in the office of the president, or in case of his absence or disability, the vice-president shall act as president for the unexpired term or during the continuance of the absence or disability.

En. Sec. 10, Ch. 121, L. 1923.

5520.11. Director of finance clerk—Powers. The director of finance shall be ex-officio clerk of the commission and shall either in person or by deputy keep the records of the commission and perform such other duties as may be required by this act or by the commission.

En. Sec. 11, Ch. 121, L. 1923.

5520.12. Quorum and voting. A majority of the members elected to the commission shall constitute a quorum to do business, but a less number may adjourn from time to time and compel the attendance of absent members in such manner and under such penalties as may be prescribed by ordinance. The affirmative vote of a majority of the members elected to the commission shall be necessary to adopt any ordinance, resolution, order or vote; except that a vote to adjourn, or regarding the attendance of absent members may be adopted by a majority of the members present.

En. Sec. 12, Ch. 121, L. 1923.

5520.13. Compensation of commissioners—Compulsory attendance. The commission may by ordinance provide compensation for its members

to be paid in equal monthly or quarterly installments; but the total amount of any such compensation for each member, shall not exceed the sum of (\$400) per year.

Any member absent from a regular or regularly called meeting of the commission, except on account of his own illness, shall forfeit two per centum (2%) of his annual compensation for each such absence. Absence from all regular meetings for a period of ninety days shall operate to vacate the seat of a member unless such absence be authorized by the commission. In addition to any compensation authorized by this section each member of the commission shall receive ten cents per mile for any distance, in excess of ten miles, necessarily traveled in going from and returning to his residence because of attendance upon a regular, or regularly called meeting of the commission.

En. Sec. 13, Ch. 121, L. 1923.

5520.14. Ordinances, how enacted. Ordinances and resolutions shall be introduced in the commission only in written or printed form. All ordinances or resolutions, except ordinances making appropriations, shall be confined to one subject which shall be clearly expressed in the title, except as provided in the next succeeding section of this act. Ordinances making appropriations shall be confined to the subject of appropriations. No ordinance shall be passed until it has been read on three separate days, unless the requirement of reading on three separate days has been dispensed with by a vote of not less than two-thirds of the members of the commission. The final reading shall be in full unless a written or printed copy of the measure shall have been furnished to each member of the commission prior to such reading.

The enacting clause of all ordinances passed by the commission shall be "Be it ordained by the city and county of, " and the enacting clause of all ordinances submitted by the initiative shall be "Be it ordained by the people of the city and county of"

En. Sec. 14, Ch. 121, L. 1923.

5520.15. Publication of ordinances. Ordinances may be revised, codified, re-arranged and published in book form under appropriate titles, chapters and sections and such revision and codification may be made in one ordinance containing one or more subjects. The publication of such revision and codification in book form as aforesaid shall be held to be a sufficient publication of the ordinance or several ordinances contained in such revision and codification. Any such publication of a revision or codification of ordinances in book form shall contain a certificate of the president and clerk of the correctness of such revision, codification and publication; and such book so published shall be received in evidence in any court for the purpose of proving the ordinance or ordinances therein contained, the same and for the same purpose as the original book, ordinances, minutes or journals would be received.

En. Sec. 15, Ch. 121, L. 1923.

5520.16. Ordinances, how revised. No ordinance, resolution or section thereof shall be revised or amended unless the new ordinance or resolu-

tion contains the entire ordinance, resolution or section thereof as revised or amended.

En. Sec. 16, Ch. 121, L. 1923.

5520.17. Ordinances, effective date — Emergencies — Submission to freeholders. Ordinances making the annual tax levy, ordinances and resolutions providing for local improvements and assessments, and emergency measures shall take effect at the time indicated therein. All other ordinances and resolutions enacted by the commission shall be in effect from and after thirty days from the date of their passage. Ordinances adopted by the electors shall take effect at the time fixed therein, or, if no time is specified, thirty days after the adoption thereof. An emergency measure is an ordinance or resolution to provide for the immediate preservation of the public peace, health or safety, in which the emergency claimed is set forth and defined in a preamble thereto. The affirmative vote of at least two-thirds of the members of the commission shall be required to pass an emergency ordinance or resolution. No measure making or amending a grant, renewal or extension of a franchise or other special privilege shall ever be passed without first submitting the application therefor to the resident freeholders in the manner provided by section 5075 and 5076 of the Revised Codes of Montana of 1921.

En. Sec. 17, Ch. 121, L. 1923.

5520.18. Recording and publication ordinances. Every ordinance or resolution upon its final passage shall be recorded in a book kept for that purpose and shall be authenticated by the signatures of the president and clerk. Within ten days after its final passage each ordinance or resolution shall be published at least once in such manner as the commission may by ordinance provide.

En. Sec. 18, Ch. 121, L. 1923.

5520.19. Submission ordinances by petition. Any proposed ordinance, except an ordinance making a tax levy or appropriation, may be submitted to the commission by petition signed by ten per centum (10%) of the qualified electors of the municipality whose names appear on the register of voters on the date when the proposed ordinance is submitted to the commission. All petition papers circulated with respect to any proposed ordinance shall be uniform in character and shall contain the proposed ordinance in full.

En. Sec. 19, Ch. 121, L. 1923.

5520.20. Initiative petitions, submissions of. If an initiative petition, or amended petition be found sufficient by the clerk he shall so certify and shall submit the ordinance therein set forth to the commission at its next meeting, and the commission shall at once read and refer it to an appropriate committee, which may be a committee of the whole. Provision shall be made for public hearings upon the proposed ordinance before the committee to which it is referred. Thereafter the committee shall report the ordinance to the commission, with its recommendations thereon, not later than sixty days after the date on which such ordi-

nance was submitted to the commission by the clerk. Upon receiving the ordinance from the committee the commission shall proceed at once to consider it and shall take final action thereon within thirty days from the date of such committee report.

En. Sec. 20, Ch. 121, L. 1923.

5520.21. Changes in proposed ordinances—Submission to voters. If the commission fail to pass an ordinance proposed by initiative petition, or pass it in a form different from that set forth in the petition therefor, the committee of the petitioners hereinafter provided for may require that it be submitted to a vote of the electors either in its original form or with any change or amendment presented in writing either at a public hearing before the committee to which the proposed ordinance was referred or during the consideration thereof by the commission. If the committee of petitioners require the submission of a proposed ordinance to a vote of the electors they shall certify that fact to the clerk and file in his office a certified copy of the ordinance, in the form in which it is to be submitted, within ten days after final action on such ordinance by the commission.

En. Sec. 21, Ch. 121, L. 1923.

5520.22. Certification by clerk—Submission to electors. Upon receipt of the certified copy of a proposed ordinance from the committee of the petitioners the clerk shall certify the fact to the commission at its next regular meeting. If a municipal election is to be held within six months but more than ninety days after the receipt of the clerk's certificate by the commission, such proposed ordinance shall be submitted to a vote of the electors at such election. If no such election is to be held within the time aforesaid the commission may provide for submitting the proposed ordinance to the electors at a special election to be held not sooner than ninety days after receipt of the clerk's certificate. If no municipal election be held within six months as aforesaid, and the commission does not provide for a special election, the proposed ordinance shall be submitted to the electors at the first election held after the expiration of such six months. If, when submitted to the electors, a majority of those voting on a proposed ordinance shall vote in favor thereof, it shall thereupon be an ordinance of the municipality.

En. Sec. 22, Ch. 121, L. 1923.

5520.23. Effective date of initiative ordinances. When an ordinance proposed by initiative petition is passed by the commission in a changed or amended form, and the committee of the petitioners require that such proposed ordinance be submitted to a vote of the electors as hereinbefore provided, the ordinance as passed by the commission shall not take effect until after such vote, and, if the proposed ordinance so submitted, be approved by a majority of the electors voting thereon, the ordinance as passed by the commission shall be deemed repealed.

En. Sec. 23, Ch. 121, L. 1923.

5520.24. Initiative repealing ordinances. Proposed ordinances for repealing any existing ordinance or ordinances, in whole or in part, may

be submitted to the commission as provided in the preceding sections for initiating ordinances. Initiated ordinances adopted by the electors shall be published, and may be amended or repealed by the commission, as in the case of other ordinances.

En. Sec. 24, Ch. 121, L. 1923.

5520.25. Submission ordinances to electors—Referendum petitions—Suspensions. The electors shall have power to approve or reject at the polls any ordinance passed by the commission, except an ordinance making a tax levy or an emergency measure, such power being known as the referendum. Ordinances submitted to the commission and passed by the commission without change, or passed in an amended form and not required by the committee of the petitioners to be submitted to a vote of the electors, shall be subject to the referendum in the same manner as other ordinances. If, within thirty days after the final passage of an ordinance, a petition signed by ten per centum (10%) of the qualified electors whose names appear on the register of voters on the date when such petition is filed, shall be filed with the clerk requesting that the ordinance, or any specified part thereof, be either repealed or submitted to a vote of the electors, it shall not become operative until the steps indicated herein have been taken. Referendum petitions shall contain the text of the ordinance, or part thereof, the repeal of which is sought.

En. Sec. 25, Ch. 121, L. 1923.

5520.26. Certification petitions—Reconsideration ordinances—Submission to voters. If a referendum petition, or amended petition, be found sufficient by the clerk he shall certify that fact to the commission at its next regular meeting and the ordinance or part thereof set forth in the petition shall not go into effect, or further action thereunder shall be suspended if it shall have gone into effect, until approved by the electors as hereinafter provided. Upon receipt of the clerk's certificate the commission shall proceed to reconsider the ordinance or part thereof and its final vote upon such reconsideration shall be upon the question "Shall the ordinance (or part of the ordinance) set forth in the referendum petition be repealed?" If upon such reconsideration the ordinance, or part thereof, be not repealed it shall be submitted to the electors at the next municipal election held not less than ninety days after such final vote by the commission. The commission by vote of not less than two-thirds of its members may submit the ordinance, or part thereof, to the electors at a special election to be held not sooner than the time aforesaid. If when submitted to the electors any ordinance, or part thereof, be not approved by a majority of those voting thereon it shall be deemed repealed.

En. Sec. 26, Ch. 121, L. 1923.

5520.27. Ballot title—Voting. Ordinances, or parts thereof, submitted to vote of the electors in accordance with the initiative and referendum provisions of this act shall be submitted by ballot title which shall be prepared in all cases by the director of law. The ballot title may be distinct from the legal title of any such proposed or referred

ordinance and shall be a clear, concise statement, without argument or prejudice, descriptive of the substance of such ordinance or part thereof. The ballot used in voting upon any ordinance, or part thereof, shall have below the ballot title the two following propositions, one above the other, in the order indicated: "For the ordinance" and "Against the ordinance." Immediately at the left of each proposition there shall be a square in which by making a cross-mark (X) the elector may vote for or against the ordinance or part thereof. Any number of ordinances, or parts thereof, may be voted upon at the same election and may be submitted on the same ballot, but the ballot used for voting thereon shall be for that purpose only.

En. Sec. 27, Ch. 121, L. 1923.

5520.28. Preliminary acts. In case a petition be filed requiring that an ordinance passed by the commission providing for the expenditure of money, a bond issue, or a public improvement be submitted to a vote of the electors, all steps preliminary to such actual expenditure, actual issuance of bonds, or actual execution of the contract for such improvement, may be taken prior to the election.

En. Sec. 28, Ch. 121, L. 1923.

5520.29. Signatures to petitions—Form affidavit. The signatures to initiative, referendum or recall petitions need not be appended to one paper, but to each separate petition paper there shall be attached an affidavit of the circulator thereof as provided by this section. Each signer of any such petition paper shall sign his name in ink or indelible pencil and shall indicate after his name his place of residence by street and number, or other description sufficient to identify the place. There shall appear on each petition paper the names and addresses of five electors of the municipality, who, as a committee of the petitioners, shall be regarded as responsible for the circulation and filing of the petition. The affidavit attached to the petition paper shall be as follows:

State of Montana, }
City and County of

....., being duly sworn, deposes and says that he is the circulator of the foregoing paper and that the signatures appended thereto were made in his presence and are the genuine signatures of the persons whose names they purport to be.

Signed

Subscribed and sworn to before me this day of, 19.....

.....,
Notary Public for the State of Montana,
Residing at, Montana.

My commission expires

En. Sec. 29, Ch. 121, L. 1923.

5520.30. Filing and certification of petitions. All petition papers comprising an initiative, referendum or recall petition shall be assembled

and filed with the clerk as one instrument. Within ten days after a petition is filed the clerk shall determine whether it is signed by a sufficient number of electors and shall attach thereto a certificate showing the result of his examination. If he shall certify that the petition is insufficient he shall set forth in his certificate the particulars in which it is defective and shall at once notify the committee of the petitioners of his findings.

En. Sec. 30, Ch. 121, L. 1923.

5520.31. Amendment of petitions. An initiative, referendum or recall petition may be amended at any time within ten days after the making of a certificate of insufficiency by the clerk, by filing a supplementary petition upon additional papers signed and filed as provided in case of an original petition. The clerk shall, within five days after such amendment is filed, make examination of the amended petition and, if his certificate shall show the petition still to be insufficient, he shall file it in his office and notify the committee of the petitioners of his findings and no further action shall be had on such insufficient petition. The finding of the insufficiency of a petition shall not prejudice the filing of a new petition for the same purpose.

En. Sec. 31, Ch. 121, L. 1923.

5520.32. Manager—Appointment—Powers—Compensation — Removal. The commission shall appoint a manager, who shall be the chief executive officer of the municipality. He shall be chosen by the commission solely on the basis of his executive and administrative qualifications and need not when appointed be a resident of the municipality. No member of the commission shall, during the time for which elected, be chosen manager. The manager shall not be appointed for a definite term, but shall be removable at the pleasure of the commission. In case the commission determine to remove the manager he shall, if he so demand, be given a written statement of the reason alleged for the proposed removal and the right to be heard thereon at a public meeting of the commission prior to the date on which his final removal shall take effect, but pending and during such hearing the commission may suspend him from office. The action of the commission in suspending or removing the manager shall be final, it being the intention of this act to vest all authority and fix all responsibility for any such suspension or removal in the commission. In case of the absence or disability of the manager the commission may designate some responsible person to perform the duties of the office. The manager shall receive such compensation as may be fixed by the commission.

En. Sec. 32, Ch. 121, L. 1923.

5520.33. Appointment of officers by manager. The manager shall be responsible to the commission for the proper administration of the affairs of the municipality placed in his charge and to that end shall appoint all officers and employees in the administrative service of the municipality, except as otherwise provided in this act and except as he may authorize the head of a department or office, responsible to him to appoint subordinates in such department or office. Appointments by or under the authority of the manager shall be confined to citizens of the municipality,

except in such specific cases as the commission may suspend this requirement, and shall be on the basis of the ability, training and experience of the appointees in the work which they are to perform. All such appointments shall be without definite term unless for temporary service not to exceed sixty days.

En. Sec. 33, Ch. 121, L. 1923.

5520.34. Removal of officers—Procedure. Any officer or employee of the municipality appointed by the manager, or upon his authorization, may be laid off, suspended or removed from office or employment either by the manager or the officer by whom appointed. Verbal or written notice of lay-off, suspension or removal given to an officer or employee, or written notice left at or mailed to his usual place of residence, shall be sufficient to put any such lay-off, suspension, or removal into effect unless the person so notified shall, within five days of such notice, demand a written statement of reasons therefor and the right to be heard thereon before the manager. Upon such demand the officer making the lay-off, suspension or removal shall supply the person notified thereof with a written statement of the reasons therefor and the manager shall fix a time and place for the public hearing. Following the public hearing the manager shall either confirm the lay-off, suspension or removal as specified in the notice, reinstate the person so notified in the service, or make such other disposition of the matter as, in his opinion, the good of the service may require. The decision of the manager in any such case shall be final, and there shall be no appeal therefrom to any officer, body or court whatsoever. A copy of the written statement of reasons given for any lay-off, suspension or removal, and a copy of any written reply thereto by the officer or employee involved, together with a copy of the decision of the manager, shall be filed as a public record in the office of the clerk.

En. Sec. 34, Ch. 121, L. 1923.

5520.35. Control of administrative service. Neither the commission nor any of its committees or members shall direct or request the appointment of any person to, or his removal from, office or employment by the manager or any of his subordinates, or in any manner take part in the appointment or removal of officers and employees in the administrative service of the municipality. Except for the purpose of inquiry, the commission and its members shall deal with that portion of the administrative service for which the manager is responsible solely through the manager, and neither the commission nor any member thereof shall give orders to any subordinate of the manager either publicly or privately. Any violation of the provisions of this section by a member of the commission shall be a misdemeanor, conviction of which shall immediately forfeit the office of the member so convicted.

En. Sec. 35, Ch. 121, L. 1923.

5520.36. General duties of manager. It shall be the duty of the manager to act as chief conservator of the peace within the municipality; to supervise the administration of the affairs of the municipality; to see

that the ordinances of the municipality and the laws of the state are enforced; to make such recommendations to the commission concerning the affairs of the municipality as may seem to him desirable; to keep the commission advised of the financial conditions and future needs of the municipality; to prepare and submit to the commission such reports as may be required by that body; and to perform such other duties as may be prescribed by this act or be required of him by ordinance or resolution of the commission.

En. Sec. 36, Ch. 121, L. 1923.

5520.37. Who to attend sessions of commission. The manager, the directors of all departments, and all other officers of the municipality shall be entitled to be present at all sessions of the commission. The manager shall have the right to take part in the discussion of all matters coming before the commission and the directors and other officers shall be entitled to take part in all discussions of the commission relating to their respective departments and offices.

En. Sec. 37, Ch. 121, L. 1923.

5520.38. Enumeration of departments — Changes. In consolidated municipalities of the first, second, third and fourth classes there shall be a department of finance; a police department, a department of public work, a department of health, a fire department, and such other departments and offices as may be established by ordinance. In consolidated municipalities of the fifth, sixth, seventh and eighth classes there shall be a department of finance, a police department, a department of public works and a department of health and such other departments and offices as may be established by ordinance. The commission may change or abolish any department or office established by ordinance and may prescribe, combine, distribute or discontinue the functions and duties thereof. Additional functions and duties may be by ordinance assigned to departments and offices created by this act, but no function or duty assigned by this act to any such department or office shall be discontinued or assigned to any other department or office. If the manager so recommend, and the commission so authorize, the manager may appoint one person to act, as the head of two or more departments or offices; but the department of law must not thus be joined with any other department, nor shall the manager be authorized to act as head of the department of finance, or of any office therein other than of purchasing agent or assessor.

En. Sec. 38, Ch. 121, L. 1923.

5520.39. Employees, how regulated. The number of assistants and other subordinates to be employed in or by each administrative department or office shall be fixed by the commission, but the commission may authorize the manager to determine the number of such assistants and subordinates in and for a specified department or office subject to the appropriations made thereto.

En. Sec. 39, Ch. 121, L. 1923.

5520.40. List of employees—Payment salaries—Recovery. The director of finance shall maintain in his office a list of all persons in the administrative service of the municipality, showing in connection with each name the position held, the date of appointment, the character of employment, and the rate of compensation. Each appointing officer shall promptly transmit to the director of finance such information regarding his department or office as may be necessary to keep this list accurate in all respects at all times. The treasurer shall not pay, nor shall the director of finance issue, any warrant for the payment of, any salary or compensation to any person whose name does not appear upon such list, nor shall payment be made at a rate other than that specified on such list. Any sum paid contrary to the foregoing provisions of this section may be recovered from any officer paying or authorizing the payment thereof or from the surety on his official bond. If through the failure of any officer to give information to the director of finance as required in this section, or through omission or error in such information, payment is made to any person whose name should not be on such list, or payment is made in excess of the amount which any person whose name is rightfully on the list should receive, then the amount of any such payment or excess payment may be recovered from the officer by reason of whose failure, omission or error the payment or excess payment was made, or from the surety on his official bond.

En. Sec. 40, Ch. 121, L. 1923.

5520.41. Compensation of employees—Schedules. The compensation of officers and employees in the administrative service of the municipality shall be fixed by ordinance, but all positions in such service except those of heads of departments and heads of offices not included within regular departments shall, for purposes of compensation, be graded and classified by the manager according to duties and responsibilities. The commission shall by ordinances establish a schedule of compensation for the positions so graded and classified which shall prescribe uniform compensation for like service as determined by the grading and classification of the manager. Such schedule of compensation may establish a minimum and maximum for any grade, and an increase in compensation within the limits provided for any grade may be granted by the manager upon the basis of efficiency and seniority.

En. Sec. 41, Ch. 121, L. 1923.

5520.42. Advisory board—Compensation—Meetings. The manager may appoint a board of citizens qualified to act in an advisory capacity to the head of any specified department or office. The members of all such boards shall serve without compensation and it shall be their duty to consult and advise with the officer in charge of the department or office for which they are appointed but not to direct the conduct of such department or office. Public meetings of such boards may be called for the consideration of the affairs of the department or office for which they are appointed.

En. Sec. 42, Ch. 121, L. 1923.

5520.43. Investigation affairs of municipality—Service of subpoenas.

The commission, the manager, or any person or committee authorized by either of them, shall have power to inquire into the conduct of any department or office of the municipality and to make investigations as to municipal affairs, and for that purpose may subpoena witnesses, administer oaths, and compel the production of books, papers and other evidence. It shall be the duty of the manager to designate a police officer to serve subpoenas. The commission shall provide by ordinance the penalty or penalties for contempt in refusing to obey any such subpoena, or to produce such books, papers and other evidence and shall have the power to punish any such contempt in the manner provided by ordinance.

En. Sec. 43, Ch. 121, L. 1923.

5520.44. Department of law—Duties of director.

The department of law shall be in charge of a director to be appointed by the commission without definite term, who shall be a resident and elector of the municipality and who shall possess all of the qualifications required of county attorneys. He shall have all the powers and, either personally or by such assistants as he may designate, shall perform all the duties that now are or hereafter may be prescribed for county attorneys, city attorneys and public administrators and, in addition thereto, he shall be chief legal advisor of and attorney and counsel for the municipality and of all departments and offices thereof and shall perform such other duties as may be required by the commission. He shall qualify by taking the oath of office prescribed by the constitution and giving a bond in the amount required of a public administrator in a county of the same class. He shall receive from the state as part of his salary the same amount which is paid by the state to county attorneys in counties of the same class, and the remainder of his salary shall be paid by the municipality. For all purposes in connection with criminal prosecutions he shall be known and designated as "County Attorney of the City and County of

En. Sec. 44, Ch. 121, L. 1923.

5520.45. Director of finance—Powers.

The director of finance shall have charge of the administration of the financial affairs of the municipality including the keeping and supervision of all accounts; the custody and disbursement of municipal funds and moneys; the making of special assessments; the assessment of property for taxation; the issuance of licenses; the collection of license fees; the control over expenditures; the purchase, storage and distribution of supplies needed by the municipality; and such other duties as the commission may by ordinance require. He shall also have all powers and perform all duties imposed upon county clerks, recorders and auditors by general law.

En. Sec. 45, Ch. 121, L. 1923.

5520.46. Director of finance—Duties as to revenue and expenses.

The director of finance shall prepare and submit to the commission each month a summary statement of revenues and expenses for the preceding month, detailed as to appropriations and funds in such manner as show

the exact financial condition of the municipality and of each department, and office thereof as of the last day of such month.

En. Sec. 46, Ch. 121, L. 1923.

5520.47. Division of audit and account. There shall be in the department of finance a division of audit and accounts of which the directors of finance shall himself be the head. As head of such office he shall be charged with keeping the books of financial account for all departments and offices of the municipality and, whenever practicable, such books and accounts shall be kept in the office of the division of audit and accounts. Report shall be made daily to the division of audit and accounts by each department and office showing the receipt of all moneys and the disposition thereof.

En. Sec. 47, Ch. 121, L. 1923.

5520.48. Officer's accounts to be audited when. Upon the death, resignation, removal or expiration of the term of any officer of the municipality the director of finance shall cause an audit and investigation of the accounts of such officer to be made and shall report to the manager and the commission. Either the commission or the manager may at any time provide for an examination or audit of the accounts of any officer or department of the municipal government. In case of the death, resignation or removal of the director of finance, the manager shall cause an audit to be made of his accounts. If, as a result of any such audit, an officer be found indebted to the municipality the director of finance, or other person making such audit, shall immediately give notice thereof to the commission, the manager and the director of law and the latter shall forthwith proceed to collect such indebtedness.

En. Sec. 48, Ch. 121, L. 1923.

5520.49. Division of the treasury. There shall be in the department of finance a division of the treasury, the head of which shall be treasurer of the municipality, and who shall have the powers and perform the duties prescribed for city treasurers and county treasurers by general law and who shall be required to qualify by giving a bond in the same amount required of county treasurers of counties of the same class. All moneys received by an officer or employee of the municipality for or in connection with the business of the municipality shall be paid promptly into the treasury. The commission shall by ordinance provide for the prompt and regular payment of such money into the treasury, and shall also, in the manner hereinafter provided, designate the banking institutions with which it shall be deposited.

En. Sec. 49, Ch. 121, L. 1923.

5520.50. Division of purchases and supplies — Purchasing agent. There shall be in the department of finance a division of purchases and supplies at the head of which there shall be a purchasing agent. The purchasing agent shall make all purchases for the municipality in the manner, and with such exceptions, as may be provided by ordinance and shall, under such regulations as may be provided by ordinance,

sell all property, real and personal, of the municipality not needed for public use or that may have become unsuitable for use. He shall have charge of such storerooms and warehouses of the municipality as the commission may by ordinance provide.

En. Sec. 50, Ch. 121, L. 1923.

5520.51. Supplies, how purchased—Limitations. Before making any purchase or sale the purchasing agent shall give opportunity for competition, under such rules and regulations as the commission may by ordinance establish. Supplies required by any department or office of the municipality may be furnished upon requisition from the stores under the control of the purchasing agent, and whenever so furnished shall be paid for by the department or office furnished therewith by warrant made payable to the credit of the store's account of the division of purchases and supplies. The purchasing agent shall not furnish any supplies to any department or office unless there be to the credit thereof an available unencumbered appropriation balance sufficient to pay for such supplies.

En. Sec. 51, Ch. 121, L. 1923.

5520.52. Division of assessment. There shall be in the department of finance a division of assessment the head of which shall be the assessor. The assessor and his deputies shall have the powers, qualify in the manner, and perform the duties prescribed for county assessors and deputy assessors by general law.

En. Sec. 52, Ch. 121, L. 1923.

5520.53. Powers of assessor. The assessor shall also be in charge of the preparation of all special assessments for public improvements; the giving of notice of such assessments to property owners; and the certification of all unpaid assessments to the director of finance.

En. Sec. 53, Ch. 121, L. 1923.

5520.54. Fiscal year. The fiscal year of the municipality shall begin with the first day of July and shall end with the next succeeding thirtieth day of June, and all of the provisions of the general laws of the state in respect to budgets for cities and counties shall apply to such municipality.

En. Sec. 54, Ch. 121, L. 1923.

5520.55. Limitation on tax levy. No ordinance making the annual tax levy shall be passed fixing the rate to be levied upon all property within the municipality to defray current expenses, including salaries otherwise unprovided for, in excess of sixteen mills on each dollar of the assessed valuation.

En. Sec. 55, Ch. 121, L. 1923.

5520.56. Tax limit. The tax limit provided by section 55 of this act shall apply only to taxes for the purposes therein specified. Taxes required by this act to be levied on account of the debt of the munici-

pality, or any district thereof, and special taxes authorized by this act or by the general laws of the state, shall not be affected by such limits nor shall such taxes be considered in determining the limits of taxation fixed by section 55 of this act.

En. Sec. 56, Ch. 121, L. 1923.

5520.57. Special tax levy. The municipality shall have the power and authority to levy special taxes for all purposes which counties, cities and towns are authorized to levy by general laws of the state, and all of the provisions of such laws shall be applicable to and shall govern and control, the municipality in the levying and collection of such special taxes.

En. Sec. 57, Ch. 121, L. 1923.

5520.57A. Designation districts—Tax. The commission may by ordinance designate clearly specified districts in or for which special services are to be performed and may levy upon the property in any such district such tax, in addition to any taxes authorized by section 55 of this act as may be necessary to pay the cost of such special service or services. Any such additional tax levied under the authority of this section upon the property within any district shall not exceed fifteen mills unless the question of levying a higher rate for a specified year or years shall have been submitted to the electors of the district and approved by a majority of those voting therein; but in no case shall such additional levy be more than twenty mills.

En. Sec. 1, Ch. 162, L. 1925.

5520.58. Collection of taxes. All taxes levied by the municipality shall be collected and payable in the manner, at the time and under the penalties prescribed by law for the collection and payment of state and county taxes.

En. Sec. 58, Ch. 121, L. 1923.

5520.59. Continuation of special districts—Special tax levies. The district comprised within the boundaries of any city, town or district, existing within the county at the time of the adoption of this act by the electors thereof shall, for the purpose of paying the interest and principal of any debt incurred by such city, town or district prior to such adoption, be continued as a special district until such debt shall have been paid, and the commission shall, in the annual tax levy ordinance, levy upon the property within each such district such tax, in addition to all other taxes, as the director of finance shall report to be necessary to provide for paying the interest on each such debt as it falls due and the principal thereof as it matures, and no other property within the municipality shall be taxable or made liable for the payment of any such debt. The commission shall likewise provide in the annual tax levy ordinance for the levy of such tax upon all property within the municipality as the director of finance shall report to be necessary to provide for paying the interest as it falls due and the principal as it matures of any debt of the municipality as a whole. The tax levy for the debt of the

municipality as a whole, and the tax levy for the debt of each such district, shall each be a separate levy and shall be distinct from and in addition to all other tax levies, and the proceeds of each such tax levy shall be placed in a separate fund for the payment of the interest and principal of the debt for which the tax was levied, and no part of any such fund shall be used for any other purpose whatever.

En. Sec. 59, Ch. 121, L. 1923.

5520.60. Claims—Vouchers—Issuance warrants. No claim against the municipality shall be paid except by means of a warrant on the treasury issued by the director of finance. The director of finance shall issue no warrant for the payment of a claim unless the claim be evidenced by a voucher approved by the head of the department or office for which the indebtedness was incurred, and each such officer and his surety shall be liable to the municipality for all loss or damage sustained by reason of his negligent or corrupt approval of any claim.

En. Sec. 60, Ch. 121, L. 1923.

5520.61. Examination of claims—Liability director. The director of finance shall examine all pay-rolls, bills and other claims and demands against the municipality and shall issue no warrant for payment unless he finds that the claim is in proper form, correctly computed and duly approved; that it is legally due and payable; and that an appropriation has been made therefor which has not been exhausted. He may investigate any claimant and for that purpose may summon before him any officer, agent or employee of the municipality, any claimant or other person, and examine him upon oath or affirmation relative thereto, and if he finds a claim to be fraudulent, erroneous or otherwise invalid or that the appropriation out of which such claim is payable has been exhausted, he shall not issue a warrant therefor. If the director of finance issue a warrant on the treasury authorizing payment of any claim in contravention of the provisions of this section he and his sureties shall be individually liable to the municipality for the amount of such warrant if paid.

En. Sec. 61, Ch. 121, L. 1923.

5520.62. Certification of certain contracts. No contract, agreement or other obligation, other than contracts pertaining to work or improvements to be paid for by special assessments, involving the expenditure of any funds shall be entered into, nor shall any order for such expenditures be valid, unless the director of finance shall first certify to the commission that the object or purpose for which such expenditure is to be made and the amount thereof is provided for by an appropriation in the annual budget, or in a supplemental budget, and that the same has not been expended. The certificate of the director of finance shall be filed and made a matter of record in his office, and the appropriation for such purpose shall thereafter be considered as having been set aside and expended to the amount of such contract, agreement or obligation.

En. Sec. 62, Ch. 121, L. 1923.

5520.63. Contracts, when void. All contracts, agreements or other obligations entered into, all ordinances and resolutions passed, and orders adopted, contrary to the provisions of sections 62 of this act shall be void, and no person whatever shall have any claim, or demand against the municipality thereunder, nor shall the commission or any officer of the municipality waive or qualify the limitations fixed by such sections, or fasten upon the municipality any liability whatever in excess thereof.

En. Sec. 63, Ch. 121, L. 1923.

5520.64. Depositories—Bonds. On or before the first day of August of each year the commission shall designate the banks subject to state or national supervision in which the funds of the municipality shall be deposited. In designating such banks the commission shall specify the maximum amount of municipal funds that may be kept at any time in each. Unless a bank designated as a depository shall elect to deposit securities with the treasurer, as provided in the next succeeding section, it shall give good and sufficient bonds, with sureties to be approved by the commission, conditioned for the safe keeping and payment of the municipal funds deposited therewith and the interest thereon. Any such bonds of a depository shall be in the aggregate equal to the amount designated by the commission as the maximum of municipal funds which may at any time be kept by such depository.

En. Sec. 64, Ch. 121, L. 1923.

5520.65. Deposit of securities—Interest. In lieu of the surety bonds specified in the next preceding section any bank designated as a depository of municipal funds may deposit with the treasurer bonds of the class and kind in which, by the provisions of this act, the sinking fund of the municipality may be invested. Bonds so deposited shall be in an amount equal to the amount of municipal funds permitted at any time to be deposited with such bank, shall be approved by the commission and shall be accompanied by proper assignment, to the end that the bank so depositing and assigning such bonds will safely keep and pay over to the treasurer, or his order, on demand and free of exchange, all moneys at any time deposited therein with interest thereon at the rate agreed upon, and that in case of default on the part of such bank the commission shall have power and authority to sell such bonds, or so much thereof as may be necessary, to realize the full amount of the funds deposited therein. The bank shall be entitled to interest on the securities so deposited with the treasurer, when paid, and to the return of the securities at the termination of such trust so long as the bank is not in default. With the approval of the commission a bank may at any time substitute other like securities of equal value for those so deposited.

En. Sec. 65, Ch. 121, L. 1923.

5520.66. New bonds, when required. Whenever for any cause the commission shall deem the bonds or securities of any bank insufficient security for the municipal funds deposited or likely to be deposited therein the commission shall require new bonds to be given or new securities to be deposited with the treasurer. If any bank shall fail promptly to execute and present such new bonds, or deposit such new securities,

the treasurer shall at once withdraw all deposits therefrom and no further deposit of municipal funds shall be made therein until such bank shall have been redesignated by the commission as a depository.

En. Sec. 66, Ch. 121, L. 1923.

5520.67. Surety bonds—Record of securities. All surety bonds given by a bank in accordance with the provisions of this act shall continue in force so long as funds of the municipality deposited therein shall be unpaid. Nothing herein provided shall impair the rights and remedies of the municipality on such bonds under the laws of the state. Bonds and other securities given by banks in accordance with this act shall be entered in a record to be kept for that purpose by the director of finance and deposited with the treasurer for safe keeping. The record of such bonds and securities kept by the director of finance, or copies thereof certified by that officer, shall be competent and prima facie evidence of the contents and tenor thereof.

En. Sec. 67, Ch. 121, L. 1923.

5520.68. Deposit of funds. All funds received by the treasurer shall be deposited by him in the designated banks in the name of the municipality subject to the order of the treasurer, and shall be distributed among the designated banks as nearly as may be in proportion to the maximum amounts which they have been authorized to receive by the commission.

En. Sec. 68, Ch. 121, L. 1923.

5520.69. Interest on deposits. Banks designated as depositories shall pay interest on daily balances of municipal funds at a rate approved by the commission, which shall in no case be less than two and one-half per centum. The interest due on such deposits shall be paid to the treasurer by check on the last day of each quarter of the fiscal year. If the treasurer shall at any time receive, or have in any bank, funds which will probably remain on deposit three months or longer he may, with the approval of the commission either take therefor certificates of deposit from a designated depository, payable to his order on demand, and bearing a higher rate of interest, or invest such funds in any bonds maturing within six months in which the sinking fund of the municipality may be invested. The treasurer shall make a monthly statement to the director of finance of the municipal funds in each bank, and the interest received thereon, as of the last day of each month.

En. Sec. 69, Ch. 121, L. 1923.

5520.70. Disbursement of moneys by check. No bank receiving funds of the municipality on deposit shall have authority to pay out any such money except upon checks drawn upon that bank signed by the treasurer.

En. Sec. 70, Ch. 121, L. 1923.

5520.71. Liability of treasurer and sureties. When the funds of the municipality are deposited and kept in designated banks according to the provisions of this act the treasurer and the sureties on his official

bond shall be exempt from all liability for the loss of any funds so deposited if such loss is caused by the failure, bankruptcy, or any other act or default of such banks, but the want of care or due diligence on the part of the treasurer or commission in protecting the municipality against loss, shall not exempt the treasurer, the members of the commission or sureties on their respective bonds from liability. Nothing herein provided shall deprive the municipality of any right or remedy against any defaulting bank or against its officers or stockholders.

En. Sec. 71, Ch. 121, L. 1923.

5520.72. Limitation of indebtedness. The municipality shall not become indebted in any manner, or for any purpose, to an amount, including existing indebtedness, in the aggregate exceeding five per centum (5%) of the value of the taxable property therein as ascertained by the last assessment for state and county taxes prior to incurring such indebtedness, and all warrants, bonds or obligations in excess of such amount given by or on behalf of the municipality shall be void.

En. Sec. 72, Ch. 121, L. 1923.

5520.73. Borrowing money. The consolidated municipality may borrow money or issue bonds for any municipal purpose to the extent and in the manner provided by the constitution and laws of Montana for the borrowing of money or issuing of bonds by counties and cities and towns.

En. Sec. 73, Ch. 121, L. 1923.

5520.74. Sinking fund board—Investment sinking funds. The sinking funds of the municipality shall be in charge of a sinking fund board consisting of the president, the director of finance and the director of law. The president shall be the chairman and the director of finance the secretary of the board. By and with consent of the commission the sinking fund board shall invest the sinking fund in bonds or certificates of indebtedness of the United States; state bonds or certificates of indebtedness of Montana or any other state of the United States; bonds of the municipality; registered warrants on the treasury of such municipality; bonds of any city in the state of Montana; and in such county or school bonds of Montana as may be approved by the commission. In case the sinking fund be invested in bonds of the municipality such bonds shall not be canceled before maturity but shall be held by the sinking fund board and the interest thereon paid over and applied to the increase of the sinking fund. Whenever the principal of any of the bonds of the municipality shall become due the sinking fund board shall, with the consent of the commission, dispose of such of the bonds belonging to the sinking fund as, with the money on hand belonging to the sinking fund, shall be necessary to pay the bonds so becoming due.

En. Sec. 74, Ch. 121, L. 1923.

5520.75. Letting of contracts—Advertising—Execution. All contracts entered into by the municipality for supplies or materials, for any public work, or for the construction, reconstruction, repair, maintenance

or operation of any public works or improvements for which must be paid a sum exceeding two hundred and fifty dollars (\$250) shall be awarded to the lowest responsible bidder, after public advertisement and competition as may be prescribed by ordinance, but the manager shall have the right to reject all bids and advertise again. All advertisements as to contracts shall contain a reservation of the foregoing right. All contracts entered into by the municipality shall be signed by the manager after approval thereof by the commission.

En. Sec. 75, Ch. 121, L. 1923.

5520.76. Alteration of contracts. When it becomes necessary in the opinion of the manager to make alterations or modifications in any contract entered into by the municipality such alterations shall be made only when authorized by the commission upon the written recommendation of the manager. No such alteration shall be valid unless the new price to be paid for any supplies, material or work under the altered or modified contract shall have been agreed upon in writing and signed by the contractor and the manager prior to such authorization by the commission.

En. Sec. 76, Ch. 121, L. 1923.

5520.77. Police department—Director—Officers. The police department shall be in charge of a director who shall be chief of the police force of the municipality. Officers and patrolmen of the police department, subordinate to the director, shall have the powers and perform the duties conferred on and required of police officers and patrolmen in cities and towns by the laws of this state and such powers and duties as may be conferred and required by the ordinances of the municipality. The director shall have the powers and perform the duties conferred on and required of sheriffs and police officers and patrolmen shall have the powers and perform the duties conferred on and required of deputy sheriffs by the general laws of the state. For the purpose of serving and making return on all criminal and civil process, executing judgments, decrees and orders of court and making sales thereunder and returns thereof, the director shall be known and designated as "Sheriff of the City and County of" and each police officer and patrolman shall be known and designated as deputy sheriff.

En. Sec. 77, Ch. 121, L. 1923.

5520.78. Director of public works—Powers and duties. The department of public works shall be in charge of a director who shall manage and have charge of the construction, repair, improvement and maintenance of all public buildings, of roads, streets, alleys, sidewalks, bridges, viaducts and other public ways; of sewers, drains, ditches, culverts, streams and watercourses; and of boulevards, parks, playgrounds, cemeteries and other public places and grounds dedicated to public use. He shall manage and control all public cemeteries, crematories, market places or houses, garbage and sewage disposal plants and farms, and all public utilities belonging to the municipality, or any subdivision thereof, and shall have charge of the enforcement of the obligations to the municipality of all privately owned or operated public

utilities enforceable by the municipality. He shall have charge of the cleaning, sprinkling and lighting of the streets and the collection and disposal of garbage and waste. He shall also be responsible for the making and preservation of all surveys, maps, plans, drawings and estimates for such public work, and for the preservation of contracts, papers, plans, tools and appliances belonging to the municipality and pertaining to the functions of the department.

En. Sec. 78, Ch. 121, L. 1923.

5520.79. Director of public works—Qualifications. The director of public works shall have the qualifications prescribed by law for county surveyors and, in addition to the duties required by this act and by the ordinances of the municipality, he shall have the powers and shall, either in person or by a deputy having the qualifications prescribed by law for county surveyors, perform the duties required of county surveyors by the laws of the state.

En. Sec. 79, Ch. 121, L. 1923.

5520.80. Director department public health—Powers. The director of the department of health shall be a physician legally authorized to practice medicine and surgery in the state of Montana. Except as otherwise provided in this act the director of the department of health shall have the powers and perform the duties conferred on and required of coroners and county health officers and local health officers by the general laws of the state. He shall also have such other powers and perform such other duties as may be prescribed by ordinance.

En. Sec. 80, Ch. 121, L. 1923.

5520.81. Commission county board of health. The commission shall be the county board of health in and for the municipality, but in performing the duties and exercising the powers prescribed by law for such boards the commission shall act by ordinance, resolution or vote and according to the procedure prescribed by this act to be followed when acting as commission of the municipality, and it shall not be necessary to the validity of any such action for the commission to declare, or for the records thereof to indicate that it is acting in other than its usual capacity. Regulations affecting the public health, additional to those established by general law, and for the violation of which penalties are imposed, may be prescribed by ordinance and enforced as provided therein.

En. Sec. 81, Ch. 121, L. 1923.

5520.82. Fire department chief. The fire department of the municipality shall be in charge of a director who shall be chief thereof and who shall manage and control the department in the manner prescribed by the ordinances of the municipality.

En. Sec. 82, Ch. 121, L. 1923.

5520.83. Firemen's disability funds. Any disability fund, or funds, of the fire department or departments, established as required by law in any city or town of the county prior to the election and qualification

of a commission under this act, shall be continued as one such fund for the fire department of the municipality. The board of trustees of such disability fund shall consist of the president, the director of finance, the director of law, the director of the fire department, and one member of the fire department selected by a majority of the members of such department between the first and tenth day of July of each year in which the municipality shall elect members of the commission. Except as provided in this section, the disability fund of the fire department shall be continued and administered in the manner prescribed by law for such funds established in cities and towns.

En. Sec. 83, Ch. 121, L. 1923.

5520.84. Municipal superintendent of schools—Compensation—Powers.

The commission shall, by majority vote of all its members, appoint a municipal superintendent of schools to serve without definite term, but subject to removal at the pleasure of the commission. The superintendent of schools for any district within the municipality may, with the consent of the trustees of such district, be appointed to serve as municipal superintendent. The compensation of the municipal superintendent shall be fixed by the commission, and he shall have the powers and perform the duties prescribed for county superintendents of schools by the laws of the state.

En. Sec. 84, Ch. 121, L. 1923.

5520.85. Police court and judge. A police court is hereby established in and for each municipality with the jurisdiction, powers and duties within the municipality provided by general law for police courts in cities and towns, and for justices of the peace. The commission shall, by majority vote of all its members, appoint a police judge or judges to serve during the pleasure of the commission. No person shall be appointed police judge unless at least twenty-five years of age and admitted to practice law in the state of Montana. The compensation of the police judge or judges shall be fixed by the commission.

En. Sec. 85, Ch. 121, L. 1923.

5520.86. Public works, how constructed. Any local public work may be done or any local public works or improvements may be constructed, reconstructed, repaired, maintained or operated either by contract or directly by the municipality as may be determined by the commission. Before authorizing that any local public works or improvements be directly constructed, reconstructed, repaired, maintained or operated, detailed plans and estimates for each such work or improvement shall be submitted to the commission by the manager, and there shall be separate accounting for each work or improvement so executed.

En. Sec. 86, Ch. 121, L. 1923.

5520.87. Special improvement districts. The municipality shall have the same power and authority to create special improvement districts and for like purposes, and to create special lighting districts and sprinkling districts as provided by the laws of the state for cities, and towns.

En. Sec. 87, Ch. 121, L. 1923.

5520.88. Control of public works—Special improvement districts. The director of public works shall be the engineer in charge of all such work, works or improvements. The provisions of the general law of the state regarding special improvement districts, special lighting districts and sprinkling districts in cities and towns shall apply to and control the establishment under this act of special improvement districts, special lighting districts and sprinkling districts in and for the municipality and the procedure according to which any local public work or the construction, reconstruction, repair, maintenance or operation of any local public work or improvement is to be provided for when the cost thereof is to be paid in whole or in part by assessments upon the property within any such district, and such general law shall also apply to the manner of levying and collecting such assessments.

En. Sec. 88, Ch. 121, L. 1923.

5520.89. First election—What officers to act. For any election held on the question of the adoption of this act, and for the first election of members of the commission thereunder, if adopted, the county clerk and board of county commissioners shall exercise the powers and perform the duties respecting elections prescribed for county clerks and boards of county commissioners by the general laws of the state. After the adoption of this act by the electors of the county, and the election and qualification of a commission thereunder, the powers and duties of county clerks and boards of county commissioners under the general election laws of the state shall devolve upon the clerk and commission of the municipality and, except as otherwise provided in this act, the provisions of such laws shall continue to apply to all elections held within the municipality.

En. Sec. 89, Ch. 121, L. 1923.

5520.90. Municipal primary elections—Polls—Voting. A municipal primary election for the choice of members of the commission shall be held on the last Tuesday in April in each year in which members of the commission are to be elected. All candidates for the commission receiving a majority of the votes cast at the municipal primary election shall be deemed and declared elected to the commission. If candidates equal to the number of members of the commission to be elected do not receive a majority of the votes cast at such primary election, a municipal primary election shall be held on the first Tuesday in June next following the election. At all municipal elections the polls shall be open from 8 A. M. to 6 P. M. The time, manner and method of establishing election precincts and polling places and appointment of judges of election and the method of conducting election, registering voters therefor, counting the votes cast thereat, and canvassing the returns thereof, shall be as prescribed by the general election laws of the state.

En. Sec. 90, Ch. 121, L. 1923.

5520.91. Nominating petitions—Signatures. Any elector of the municipality eligible to membership in the commission may be placed in nomination therefor by petition filed with the clerk and signed by at

least two per centum (2%) of the qualified electors whose names appear upon the official register of voters of the municipality. The signatures to a nominating petition need not all be attended [appended] to one paper, but to each separate leaf of the petition there shall be attached an affidavit of the circulator thereof stating that each signature appended thereto was made in his presence and is the genuine signature of the person whose name it purports to be. Each signer of a petition shall sign his name in ink or indelible pencil and, after his name, shall designate his residence by street and number or other description sufficient to identify the place, and give the date when his signature was made, No elector shall sign petitions for more candidates for the commission than the number of places to be filled therein at the forthcoming primary election.

En. Sec. 91, Ch. 121, L. 1923.

5520.92. Form of petitions. The form of nominating petition papers shall be substantially as follows:

We, the undersigned electors of the city and county of, hereby nominate whose residence is for the office of commissioner, to be voted for at the primary election to be held on the last Tuesday of April, 19..., and we individually certify that we are qualified to vote for candidates for the above office and that we have not signed nominating petitions for more than candidates for the commission.

Residence (Street and Number) or Description to Identify Place.

Name.

Date.

.....

.....

.....

.....

State of Montana,
City and County of } ss.

....., being duly sworn, deposes and says that he is the circulator of this petition paper; that the signatures appended thereto were made in his presence and are the genuine signatures of the persons whose names they purport to be.

Signed

Subscribed and sworn to before me this day of,
19.....

Notary Public for the State of Montana, residing at,
Montana.

My commission expires, 19....

En. Sec. 92, Ch. 121, L. 1923.

5520.93. Assembling and filing petitions—Notification nominees. All separate leaves comprising a nominating petition shall be assembled and filed with the clerk as one instrument at least thirty days prior to the next succeeding last Tuesday in April. Within five days after the filing of the nomination petition the clerk shall notify the person named therein as a candidate whether such petition is signed by the required number of qualified electors. Any eligible person placed in nomination as here-

inbefore provided shall have his name printed on the ballots and placed upon any voting machine used at the primary election, if within five days after such nomination, he shall have filed with the clerk a written acceptance of the nomination.

En. Sec. 93, Ch. 121, L. 1923.

5520.94. Party marks forbidden—Form of ballot. No party mark or designation shall appear on the ballots, or in connection with the names of candidates on any voting machine, used in the election of members of the commission. Each elector may vote for as many candidates for the commission as there are places to be filled therein; but any ballot marked for more candidates than the number of places to be filled shall not be counted for any of the candidates for which marked. The ballots shall be in form substantially as follows:

Municipal Election.

City and County of

(Month and day of month), 19....

For Commissioners.

Do not vote for more than

.....

.....

.....

En. Sec. 94, Ch. 121, L. 1923.

5520.95. Determination order of names on ballot. At 2 o'clock P. M. on the tenth day before any election at which members of the commission are to be nominated and elected, the clerk shall publicly determine by lot the order in which the names of candidates for election to the commission shall be printed on the ballots, or appear on any voting machine, to be used at such election.

En. Sec. 95, Ch. 121, L. 1923.

5520.96. Names may be written on ballot. As many blank spaces shall be left on the ballots below the printed names of candidates for the commission as there are places to be filled therein. In any such space an elector may write the name of any eligible person, and a vote cast for such person shall be counted as though for a candidate whose name is printed on the ballots.

En. Sec. 96, Ch. 121, L. 1923.

5520.97. Notice of primary election—Publication. On the tenth day prior to the municipal primary election the clerk shall cause notice thereof to be published in such daily newspaper or newspapers, printed and published within and of general circulation in the municipality as the commission may have designated, and if there be no daily newspaper then in such weekly newspaper or newspapers as may be so designated. In case the commission fail to designate such newspaper or newspapers, the clerk shall cause the notice to be published in such newspaper or newspapers printed and published within and of general circulation in the

municipality as he may select. Such published notice shall contain a list of the candidates for the commission nominated as hereinbefore provided, and state the time of holding the election. On the tenth day prior to a municipal election held on the first Tuesday in June the clerk, under like conditions, shall cause a similar notice to be published concerning that election. The commission may also provide for giving notice of such elections by other means.

En. Sec. 97, Ch. 121, L. 1923.

5520.98. Names, how placed on ballot. At any municipal election held for the choice of members of the commission of [on] the first Tuesday in June following a municipal primary election there shall be printed on the ballots and placed on the voting machines the names of the candidates receiving the highest number of votes at the municipal primary election, except the names of those elected to the commission thereat, and the number of names so printed on the ballots and placed on the voting machines shall be equal to double the number of places remaining to be filled in the commission. If, by reason of their having received the same number of votes, it cannot be determined which of two or more candidates shall have his name, or their names, printed on the ballots and placed on the voting machines, then, notwithstanding the foregoing provisions of this section the names of all such candidates receiving the same number of votes shall be printed on the ballots and placed on the voting machines. The candidates for the commission at an election held on the first Tuesday in June, equal in number to the places remaining to be filled in the commission, who receive the highest number of votes shall be declared to be elected. A tie between two or more candidates shall be decided by lot in the presence of such candidates and under the direction of the clerk.

En. Sec. 98, Ch. 121, L. 1923.

5520.99. Removal commissioner by recall. Any member of the commission may be removed from office by the electors of the municipality. The procedure for effecting such a removal shall be as follows:

Any elector of the municipality may make and file an affidavit with the clerk requesting that petition be issued demanding an election for the recall of any member of the commission. Any such affidavit shall state the name of the person whose removal from the commission is sought and the grounds alleged for such removal. Upon the filing of such an affidavit the clerk shall deliver to the elector making the affidavit copies of petition papers for demanding such an election, printed copies of which the clerk shall keep on file for distribution as herein provided. In issuing any such petition paper the clerk shall enter in a record to be kept in his office the name of the elector to whom issued, the date of issuance, the number of papers issued, and shall certify on each paper the name of the elector and the date of issuance. No petition paper shall be accepted as part of a petition unless it bear such certification of the clerk and unless filed as hereinafter provided.

En. Sec. 99, Ch. 121, L. 1923.

5520.100. Recall petitions—Return and filing. A petition for a recall election to be effective must be returned and filed with the clerk within thirty days after the filing of the affidavit as provided in last preceding section, and to be sufficient must be signed by at least twenty per centum (20%) of the qualified electors of the municipality whose names appear on the official register of voters of the municipality on the date when such petition is returned and filed with the clerk. If any such petition is insufficient as originally filed it may be amended as provided in this act.

En. Sec. 100, Ch. 121, L. 1923.

5520.101. Election on recall petition. If a petition for a recall election, or an amended petition, shall be certified by the clerk to be sufficient he shall at once submit it to the commission with his certificate to that effect and shall notify the member of the commission whose removal is sought of such action. Unless the member whose removal is sought resign within five days after such notice, the commission shall thereupon order and fix a day for holding a recall election. Any such election shall be held not less than ninety nor more than one hundred and twenty days after the petition has been presented to the commission and may be held at the same time as any other election held within such period; but, if no other election be held within such period, the commission shall call a special recall election to be held within the time aforesaid.

En. Sec. 101, Ch. 121, L. 1923.

5520.102. Questions to be submitted on recall—Nomination candidates. The question of recalling any number of members of the commission may be submitted at the same election, but as to each member whose removal is sought a separate petition shall be filed and provision shall be made for an entirely separate printed ballot. Candidates to succeed any person whose removal is sought shall be placed in nomination by petition signed, filed and verified as provided for nominating petitions for a municipal primary election; except that each petition paper shall specify that the candidate named therein is a candidate to succeed a particular person whose removal is sought.

En. Sec. 102, Ch. 121, L. 1923.

5520.103. Use of voting machines prohibited—Form of ballot. Voting machines shall not be used in recall elections, and the printed ballots shall be in form substantially as follows:

RECALL ELECTION

City and County of
(Month and day of month) 19.....

SHALL (name of person) BE REMOVED FROM THE COMMISSION BY RECALL?

FOR THE RECALL OF
(Name of Person.)

AGAINST THE RECALL OF
(Name of Person.)

CANDIDATE

To succeed (name of person) if recalled. Vote for but one.

.....
.....
.....

En. Sec. 103, Ch. 121, L. 1923.

5520.104. Effect of recall election. If a majority of the votes cast on the question of recalling a member of the commission as hereinbefore provided be against his recall he shall continue in office for the remainder of his unexpired term, but subject to recall as before. If a majority of such votes be for the recall of such member he shall, regardless of any defect in the recall petition, be deemed removed from office. When a member is removed from the commission by recall the candidate to succeed such member who receives the highest number of votes shall succeed the member so removed for the unexpired term.

En. Sec. 104, Ch. 121, L. 1923.

5520.105. Resignation pending election. If a person in regard to whom a recall petition is submitted to the commission shall resign from office after notice thereof no election shall be held and some eligible person shall be chosen by a majority vote of the remaining members to fill the place for the unexpired term; but the member so resigning shall not be chosen by the commission to succeed himself.

En. Sec. 105, Ch. 121, L. 1923.

5520.106. Limitation on recall petitions. No recall petition shall be filed in respect to any member of the commission within three months after he takes office nor in case of a member subjected to a recall election and not removed thereby, until at least six months after that election.

En. Sec. 106, Ch. 121, L. 1923.

5520.107. Officer's perquisites—Limitations. No person elected or appointed to any office or position under the municipal government established by this act shall be entitled to or receive for his own use any

fees, emoluments, commissions or perquisites other than the salary or compensation fixed by this act or by the commission, and all such fees, emoluments, commissions and perquisites ensuing out of the performance of official duty shall belong to the municipality and be paid into the treasury thereof at the times and in the manner provided by the general laws of the state.

En. Sec. 107, Ch. 121, L. 1923.

5520.108. Political solicitation prohibited. No person holding an appointive office or position in the municipal government shall directly or indirectly solicit or receive, or be in any manner concerned in soliciting or receiving, any assessment, subscription or contribution for any political party or purpose whatever. No person shall orally or by letter solicit, or be in any manner concerned in soliciting, any assessment, subscription or contribution for any political party or purpose from any person holding an appointive office or position in the municipal government. No person shall use or promise to use his influence or official authority to secure any appointment, or prospective appointment to any position in the service of the municipality as a reward or return for personal or partisan political service. No person shall take part in preparing any political assessment, subscription or contribution with the intent that it should be sent or presented to or collected from any person in the service of the municipality, nor shall he knowingly send or present directly or indirectly, in person or otherwise, any political assessment, subscription or contribution to, or request its payment by any person in such service.

En. Sec. 108, Ch. 121, L. 1923.

5520.109. Other political activities prohibited. No person in the service of the municipality shall discharge, suspend, lay off, reduce in grade, or in any manner change the official rank or compensation of any person in such service or threaten to do so, for withholding or neglecting to make any contribution of money or service or any valuable thing for any political service. No person holding an appointive office or place in the municipal government shall act as an officer in a political organization, or serve as a member of a committee of any such organization, or circulate or seek signatures for any petition provided for by primary or election laws.

En. Sec. 109, Ch. 121, L. 1923.

5520.110. Penalty. Any person who, by himself or in co-operation with one or more persons, wilfully or corruptly violates any of the provisions of sections 108 and 109 of this act shall be guilty of misdemeanor and shall, upon conviction thereof, be punished by a fine of not less than fifty dollars nor more than five hundred dollars or by imprisonment for a term not exceeding three months, or by both such fine and imprisonment, and if he be an officer or employee of the municipality he shall immediately forfeit his office or employment.

En. Sec. 110, Ch. 121, L. 1923.

5520.111. Commissioner to hold no other office. No person elected to the commission shall, during the term for which elected, be appointed to any office or position in the service in the municipality. If a member of the commission shall become a candidate for any public office, other than that of commissioner, he shall immediately forfeit his place on the commission; and any appointive officer or employee of the municipality who shall become a candidate for nomination or election to any public office shall immediately forfeit the office or employment held under the municipality.

En. Sec. 111, Ch. 121, L. 1923.

5520.112. Bonds of commissioner and other officers. The members of the commission, the manager, the director of finance, the purchasing agent, the director of law, the director of police, and such other officers and employees of the municipality as the commission requires so to do, shall, immediately upon taking office, give bonds with such surety as may be approved by the commission; but no officer or employee shall become surety upon the official bond of another officer or employee. Members of the commission shall give bonds in the sum of five thousand dollars and other officers and employees shall give bonds in such amounts as the commission may require. The premium on all official bonds shall be paid by the municipality. All such bonds, except those of the manager and the director of finance, shall be filed with the director of finance. The official bonds of the manager and the director of finance shall be filed with and kept by the director of the department of law.

En. Sec. 112, Ch. 121, L. 1923.

5520.113. Oath of office. Every officer of the municipality shall, before entering upon the duties of his office, take and subscribe to the oath or affirmation required of officers by the constitution of the state of Montana, which oath or affirmation shall be filed and kept in the office of the clerk.

En. Sec. 113, Ch. 121, L. 1923.

5520.114. Interest of officers in contracts prohibited. No officer or employee of the municipality shall have a financial interest direct or indirect, in any contract therewith, or be financially interested, directly or indirectly, in the sale to the municipality of any land, materials, supplies, or services except on behalf of the municipality as an officer or employee. Any wilful violation of this section shall constitute malfeasance in office, and any officer or employee found guilty thereof shall thereby forfeit his office or position. Any violation of this section with the knowledge, actual or implied, of the person or corporation contracting with the municipality shall render the contract involved voidable by the manager or the commission.

En. Sec. 114, Ch. 121, L. 1923.

5520.115. Existing contracts continued. All contracts entered into by the county or by any city or town therein, or on behalf of any improvement district by such county or by any such city or town, prior to the election and qualification of a commission under this act, shall

continue in full force and effect subsequently thereto. Public improvements, for which initial steps may have been taken under laws effective in the county prior to the election and qualification of a commission under this act, may thereafter be carried to completion in accordance with the provisions of such laws.

En. Sec. 115, Ch. 121, L. 1923.

5520.116. Continuation of existing ordinances. The commission first elected may, at its first meeting, make an order that all existing ordinances and resolutions of some one city or town within the consolidated municipality, and which are of general application in such city or town, shall be continued in force and be extended throughout the consolidated municipality, and a copy of such order must be published at least once in each newspaper printed and published within the consolidated municipality within ten days after the making of such order. All other ordinances and resolutions of such city or town, and all ordinances of all other cities and towns within the consolidated municipality, save and except ordinances and resolutions relating to public improvements to be paid for in whole or in part by special assessments, shall, upon the making of such order, be deemed repealed.

En. Sec. 116, Ch. 121, L. 1923.

5520.117. Temporary continuation existing officers. The members of the board of county commissioners of the county and members of the council of every city and town therein, holding office on the date when any election is held at which the question of the consolidation and merging of the county and city and town governments is approved and adopted by the qualified electors of the county, shall continue in office and in the performance of their duties until the first commission shall have been elected have qualified, whereupon such board of county commissioners and city and town councils shall be deemed abolished. All other persons holding offices or positions, whether elective or appointive, under the government of such county, or under the government of any city or town therein, at the date of such election, shall continue in the performance of the duties of their respective offices and positions until provision shall be made by the commission for the performance or discontinuance of such duties, or the discontinuance of such offices or positions.

En. Sec. 117, Ch. 121, L. 1923.

5520.118. Official declarations—Merger, when effective—Legal status municipality. At the first meeting of the commission whose members are first elected under the provisions of this act, such commission shall adopt a resolution reciting the filing of the petition provided for in section 2 of this act, the ordering and hold [holding] of a special election as requested in such petition, the result of such election, and the holding of the special election for and the election of the members of the first commission, and the name and designation of the consolidated municipality, which resolution must be in duplicate, and signed by all of the members of the commission and also entered at length on the journal of the commission. One copy of such commission must be filed in the office of

the clerk of the commission and the other copy thereof must be transmitted to and filed in the office of the secretary of state. Immediately upon the adoption of such resolution by the commission the separate corporate existence of the county and of each and every city and town therein shall be deemed to be consolidated and merged into one municipal corporation under the name selected, designated and adopted as provided in this act, and such consolidated municipality shall thereupon be deemed to have succeeded to, and to possess and own all of the property and assets of every kind and description and shall, save as herein otherwise provided, become responsible for all of the obligations and liabilities of the county, cities and towns so consolidated and merged. As a political subdivision of the state, such consolidated municipality shall have the status of a county, and for the purpose of representation in the legislative assembly, as provided by the constitution and laws of this state, and for all other purposes, it shall replace and be the successor of the county and shall be attached to the same judicial district.

En. Sec. 118, Ch. 121, L. 1923.

5520.119. Transfers authorized. The commission shall have power to make all necessary regulations, not inconsistent with this act, for the transition from the several governments of and within the county to the government provided by this act, including the transfer to the treasury of the consolidated city and county of all funds and moneys of such several governments.

En. Sec. 119, Ch. 121, L. 1923.

5520.120. Effect partial invalidity act. If any clause, sentence, paragraph or part of this act shall, for any reason, be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of the act, but shall be confined in its operation to the clause, sentence, paragraph or part thereof directly involved in the controversy in which such judgment shall have been rendered.

En. Sec. 120, Ch. 121, L. 1923.

CHAPTER 64B.

CITY AND COUNTY OF BUTTE.

5520.121. Scope of act. The provisions of this act shall apply to the county of Silver Bow and to all cities and towns therein after the question of its adoption shall have been submitted to the electors of the county and approved by a majority of those voting thereon as hereinafter provided. Upon the adoption of this act by the voters of the county, and the election and qualification of a commission thereunder, the separate corporate existence and government of the county of Silver Bow and of each and every city and town therein shall be deemed consolidated and merged into one municipal corporation and government under the corporate name "city and county of Butte," which shall have the powers and be governed in the manner provided by this act. As a political subdivision of the state the city and county of Butte shall have the status of a county, and for the purpose of representation in the state

legislature, as provided by the constitution and laws of Montana, and for all other purposes, it shall replace and be the successor of Silver Bow county. Until otherwise provided by law the city and county of Butte shall constitute the second judicial district of the state.

En. Sec. 1, Ch. 160, L. 1923.

This act, authorizing the consolidation of Silver Bow county and the city of Butte into one municipal corporation under section 7, article XVI, of the constitution, is not objectionable as depriving the people of that county and city of the power of local self-government, nor as denying to a creditor of either the equal protection of the laws guaranteed by the fourteenth amendment to the federal constitution. State ex rel. Corry v. Cooney et al., 70 Mont. 355, 225 Pac. 1007.

The objection that under this act, inter alia providing that the question of the adoption of its provisions for the consolidation of the county of Silver Bow and all cities and towns therein shall be submitted to the electors of the county, residents of the city may vote away the property of the county, and residents

outside of it may do the same with property of the city, held to be without merit State ex rel. Corry v. Cooney et al., 70 Mont. 355, 225 Pac. 1007.

The petitions filed with the county clerk of Silver Bow county asking for the submission to the electors of the question of the adoption of the plan for the consolidation of the county and the city of Butte under one government were not required to have a copy of chapter 160, L. 1923, authorizing such consolidation upon a favorable vote, attached to them, it being presumed that the electors had knowledge of the act, and the provisions of section 21 of the act relating to the referendum, having reference to ordinances passed by the consolidated government and not to the act itself. State ex rel. Corry v. Cooney et al., 70 Mont. 355, 225 Pac. 1007.

5520.122. Powers. The inhabitants of the municipality organized under the provisions of this act, as its limits are at the time of such organization or as they may thereafter be established as provided by law, shall be a body politic and corporate by name "city and county of Butte," and as such shall have perpetual succession; may use a corporate seal; may sue and be sued; may contract and be contracted with; may acquire property within or without the boundaries of the municipality for any municipal purpose in fee simple or lesser interest or estate by purchase, gift, devise, appropriation, lease or lease with privilege to purchase, and may sell, lease, hold, manage and control such property as the interest of the municipality may require; and, except as otherwise provided in this act, such municipality shall have and may exercise all other powers that now are or hereafter may be conferred on cities, towns and counties by the laws of this state. All powers of the municipality, whether expressed or implied, shall be exercised and enforced in the manner prescribed in this act, or when not so prescribed, then as may be provided by ordinance or resolution of the commission.

En. Sec. 2, Ch. 160, L. 1923.

5520.123. The commission. Except as otherwise provided in this act all powers of the municipality shall be vested in a commission of seven members nominated and elected as hereinafter provided. The term of members of the commission shall be for two years and shall begin on the first day of July next following their election. If a vacancy occur in the commission, except as the result of a recall election, some eligible person shall be chosen by a majority vote of the remaining members to fill the place for the unexpired term. Members of the commission shall be qualified electors of the municipality and shall not hold any other public office except that of notary public or member of the state militia.

A member of the commission ceasing to possess any of the qualifications specified in this section shall immediately forfeit his office.

En. Sec. 3, Ch. 160, L. 1923.

5520.124. Meetings. At two o'clock P. M. on the first day of July following a regular municipal election the commission shall meet at the courthouse in Butte and the newly elected members shall assume the duties of office. Thereafter the commission shall meet at such times as may be prescribed by ordinance or resolution, but not less frequently than once each month. Special meetings shall be called by the clerk upon the written request of the president, the manager, or a majority of the members of the commission. Any such notice shall state the subject to be considered at the meeting and no other subject shall be there considered. All meetings of the commission, and of committees thereof, shall be open to the public and the rules of the commission shall provide that citizens of the municipality shall have a reasonable opportunity to be heard at any such meeting in regard to any matter considered thereat.

En. Sec. 4, Ch. 160, L. 1923.

5520.125. Powers of commission. The commission shall determine its own rules and order of business and shall keep a journal of its proceedings. It shall be judge of the election of its own members and, in such cases, shall have power to subpoena witnesses and compel the production of all pertinent books, records, and papers. It shall have power to compel the attendance of absent members, may punish its members for disorderly behavior and, by vote of not less than six members, may expel a member for disorderly conduct or the repeated violation of its rules; but no member shall be expelled unless notified of the charge against him and given an opportunity to be heard.

En. Sec. 5, Ch. 160, L. 1923.

5520.126. President—Election and powers. At its meeting on the first day of July following a regular municipal election the commission shall choose one of its members as president and another as vice-president. The president shall preside at meetings of the commission and shall exercise the powers and perform the duties conferred and imposed by this act and the ordinances of the municipality. He shall be recognized as the official head of the municipality for all ceremonial purposes, by the courts for serving civil processes, and by the governor for purposes of military law. In time of public danger or emergency he shall, if authorized by vote of the commission, take command of the police, maintain order and enforce the law. If a vacancy occur in the office of president, or in case of his absence or disability, the vice-president shall act as president for the unexpired term or during the continuance of the absence or disability.

En. Sec. 6, Ch. 160, L. 1923.

5520.127. Duties of director of finance. The director of finance shall be ex-officio clerk of the commission and shall either in person or by

deputy keep the records of the commission and perform such other duties as may be required by this act or by the commission.

En. Sec. 7, Ch. 160, L. 1923.

5520.128. Quorum and voting. A majority of the members elected to the commission shall constitute a quorum to do business but a less number may adjourn from time to time and compel the attendance of absent members in such manner and under such penalties as may be prescribed by ordinance. The affirmative vote of a majority of the members elected to the commission shall be necessary to adopt any ordinance, resolution, order or vote; except that a vote to adjourn, or regarding the attendance of absent members, may be adopted by a majority of the members present.

En. Sec. 8, Ch. 160, L. 1923.

5520.129. Compensation and mileage of commissioners—Absences. The commission may by ordinance provide compensation for its members to be paid in equal monthly or quarterly installments; but the total amount of any such compensation for each member, except the president, shall not exceed eighteen hundred (\$1800) dollars per year. The compensation of the president shall not be less than that of other members of the commission and may be fixed at a rate not more than twenty per centum (20%) in excess of that provided for such other members. Any member absent from a regular or regularly called meeting of the commission, except on leave of the commission or on account of his own illness, shall forfeit one per centum (1%) of his annual compensation for each such absence. Absence from all regular meetings for a period of ninety days shall operate to vacate the seat of a member unless such absence be authorized by the commission. In addition to any compensation authorized by this section, each member of the commission shall receive ten cents per mile for any distance, in excess of ten miles, necessarily traveled in going from and returning to his residence because of attendance upon a regular, or regularly called meeting of the commission.

En. Sec. 9, Ch. 160, L. 1923; Amd. Sec. 1, Ch. 44, L. 1925.

5520.130. Ordinances—Regulation of. Ordinances and resolutions shall be introduced in the commission only in written or printed form. All ordinances or resolutions, except ordinances making appropriations, shall be confined to one subject which shall be clearly expressed in the title, except as provided in the next succeeding section of this act. Ordinances making appropriations shall be confined to the subject of appropriations. No ordinance shall be passed until it has been read on three separate days, unless the requirement of reading on three separate days has been dispensed with by a vote of not less than six members of the commission. The final reading shall be in full unless a written or printed copy of the measure shall have been furnished to each member of the commission prior to such reading. The enacting clause of all ordinances passed by the commission shall be "Be it ordained by the city and county of Butte." The enacting clause of all ordinances submitted by the

initiative shall be "Be it ordained by the people of the city and county of Butte."

En. Sec. 10, Ch. 160, L. 1923.

5520.131. Publication of ordinances. Ordinances may be revised, codified, re-arranged and published in book form under appropriate titles, chapters and sections and such revisions and codification may be made in one ordinance containing one or more subjects. The publication of such revision and codification in book form as aforesaid shall be held to be a sufficient publication of the ordinance or several ordinances contained in such revision and codification. Any such publication of a revision or codification of ordinances in book form shall contain a certificate of the president and clerk of the correctness of such revision, codification and publication; and such book so published shall be received in evidence in any court for the purpose of proving the ordinance or ordinances therein contained, the same and for the same purpose as the original book, ordinances, minutes, or journals would be received.

En. Sec. 11, Ch. 160, L. 1923.

5520.132. Ordinances, how revised. No ordinance, resolution or section thereof shall be revised or amended unless the new ordinance or resolution contain the entire ordinance, resolution or section thereof as revised or amended.

En. Sec. 12, Ch. 160, L. 1923.

5520.133. Effective date of ordinances—Emergency measures. Ordinances making the annual tax levy appropriation ordinances, ordinances, and resolutions providing for local improvements and assessments, and emergency measures, shall take effect at the time indicated therein. All other ordinances and resolutions enacted by the commission shall be in effect from and after thirty days from the date of their passage. Ordinances adopted by the electors shall take effect at the time fixed therein or, if no time be specified, thirty days after the adoption thereof. An emergency measure is an ordinance or resolution to provide for the immediate preservation of the public peace, health or safety, in which the emergency claimed is set forth and defined in a preamble thereto. The affirmative vote of at least six members of the commission shall be required to pass any ordinance or resolution as an emergency measure. No measure making or amending a grant, renewal or extension of a franchise or other special privilege, shall ever be passed as an emergency measure.

En. Sec. 13, Ch. 160, L. 1923.

5520.134. Recording and authentication ordinances. Every ordinance or resolution upon its final passage shall be recorded in a book kept for that purpose and shall be authenticated by the signatures of the president and clerk. Within ten days after its final passage each ordinance or resolution shall be published at least once in such manner as the commission may by ordinance provide.

En. Sec. 14, Ch. 160, L. 1923.

5520.135. The initiative. Any proposed ordinance, except an ordinance making a tax levy, may be submitted to the commission by petitions signed by electors of the municipality equal in number to at least ten per centum (10%) of those who voted at the last regular municipal election. All petition papers circulated with respect to any proposed ordinance shall be uniform in character and shall contain the proposed ordinance in full.

En. Sec. 15, Ch. 160, L. 1923.

5520.136. Certification and submission initiative petitions. If an initiative petition, or amended petition, be found sufficient by the clerk he shall so certify and shall submit the ordinance therein set forth to the commission at its next meeting, and the commission shall at once read and refer it to an appropriate committee, which may be a committee of the whole. Provisions shall be made for public hearings upon the proposed ordinance before the committee to which it is referred. Thereafter the committee shall report the ordinance to the commission, with its recommendations thereon, not later than sixty days after the date on which such ordinance was submitted to the commission by the clerk. Upon receiving the ordinance from the committee the commission shall proceed at once to consider it and shall take final action thereon within thirty days from the date of such committee report.

En. Sec. 16, Ch. 160, L. 1923.

5520.137. Submission of ordinances to electors. If the commission fail to pass an ordinance proposed by initiative petition, or pass it in a form different from that set forth in the petition therefor, the committee of the petitioners hereinafter provided for may require that it be submitted to a vote of the electors either in its original form or with any change or amendment presented in writing either at a public hearing before the committee to which the proposed ordinance was referred or during the consideration thereof by the commission. If the committee of petitioners require the submission of the proposed ordinance to a vote of the electors they shall certify that fact to the clerk and file in this office a certified copy of the ordinance, in the form in which it is to be submitted, within ten days after final action on such ordinance by the commission.

En. Sec. 17, Ch. 160, L. 1923.

5520.138. Time for submission. Upon receipt of the certified copy of a proposed ordinance from the committee of the petitioners the clerk shall certify the fact to the commission at its next regular meeting. If a municipal election is to be held not more than six months or less than thirty days after the receipt of the clerk's certificate by the commission, such proposed ordinance shall be submitted to a vote of the electors at such election. If no such election is to be held within the time aforesaid the commission may provide for submitting the proposed ordinance to the electors at a special election to be held not sooner than thirty days after the receipt of the clerk's certificate. If no municipal election be held within six months as aforesaid, and the commission does not provide for a special election, the proposed ordinance shall be

submitted to the electors at the first election held after the expiration of such six months. If, when submitted to the electors, a majority of those voting on a proposed ordinance shall vote in favor thereof, it shall thereupon be an ordinance of the municipality.

En. Sec. 18, Ch. 160, L. 1923.

5520.139. Submission of amended ordinances. When an ordinance proposed by initiative petition is passed by the commission in a changed or amended form, and the committee of the petitioners require that such proposed ordinance be submitted to a vote of the electors as hereinbefore provided, the ordinance as passed by the commission shall not take effect until after such vote and, if the proposed ordinance so submitted, be approved by a majority of the electors voting thereon, the ordinance as passed by the commission shall be deemed repealed.

En. Sec. 19, Ch. 160, L. 1923.

5520.140. Submission of repealing ordinances. Proposed ordinances for repealing any existing ordinance or ordinances, in whole or in part, may be submitted to the commission as provided in the preceding sections for initiating ordinances. Initiated ordinances adopted by the electors shall be published, and may be amended or repealed by the commission, as in the case of other ordinances.

En. Sec. 20, Ch. 160, L. 1923.

5520.141. The referendum. The electors shall have power to approve or reject at the polls any ordinance passed by the commission, except an appropriation ordinance, or ordinance making a tax levy or an emergency measure, such power being known as the referendum. Ordinances submitted to the commission by initiative petition and passed by the commission without change, or passed in an amended form and not required by the committee of the petitioners to be submitted by a vote of the electors, shall be subject to the referendum in the same manner as other ordinances. If, within thirty days after the final passage of an ordinance, a petition signed by electors equal in number to at least ten per centum (10%) of those who voted at the last preceding regular municipal election be filed with the clerk requesting that the ordinance, or any specified part thereof, be either repealed or submitted to a vote of the electors, it shall not become operative until the steps indicated herein have been taken. Referendum petitions shall contain the text of the ordinance, or part thereof, the repeal of which is sought.

En. Sec. 21, Ch. 160, L. 1923.

5520.142. Certification petitions—Reconsideration—Submission. If a referendum petition, or amendment petition be found sufficient by the clerk he shall certify that fact to the commission at its next regular meeting and the ordinance or part thereof set forth in the petition shall not go into effect, or further action thereunder shall be suspended if it shall have gone into effect, until approved by the electors as hereinafter provided. Upon receipt of the clerk's certificate the commission shall proceed to reconsider the ordinance or part thereof and its final vote upon such reconsideration shall be upon the question "Shall the ordinance

(or part of the ordinance) set forth in the referendum petition be repealed?" If upon such reconsideration the ordinance, or part thereof, be not repealed it shall be submitted to the electors at the next municipal election held not less than thirty days after such final vote by the commission. The commission by vote of not less than six of its members may submit the ordinance, or part thereof, to the electors at a special election to be held not sooner than the time aforesaid. If when submitted to the electors any ordinance, or part thereof, be not approved by a majority of those voting thereon it shall be deemed repealed.

En. Sec. 22, Ch. 160, L. 1923.

5520.143. Ballot title—Voting. Ordinances, or parts thereof, submitted to vote of the electors in accordance with the initiative and referendum provisions of this act shall be submitted by ballot title which shall be prepared in all cases by the director of law. The ballot title may be distinct from the legal title of any such proposed or referred ordinance and shall be a clear, concise statement, without argument or prejudice, descriptive of the substance of such ordinance, or part thereof. The ballot used in voting upon any such ordinance, or part thereof, shall have below the ballot title the two following propositions, one above the other, in the order indicated: "For the ordinance" and "Against the ordinance." Immediately at the left of each proposition there shall be a square in which by making a cross-mark (X) the elector may vote for or against the ordinance or part thereof. Any number of ordinances, or parts thereof, may be voted upon at the same election and may be submitted on the same ballot, but the ballot used for voting thereon shall be for that purpose only.

En. Sec. 23, Ch. 160, L. 1923.

5520.144. Preliminary acts. In case a petition be filed requiring that an ordinance passed by the commission providing for an expenditure of money, a bond issue, or a public improvement be submitted to a vote of the electors, all steps preliminary to such actual expenditure, actual issuance of bonds, or actual execution of the contract for such improvement, may be taken prior to the election.

En. Sec. 24, Ch. 160, L. 1923.

5520.145. Initiative referendum and recall petition. The signature to initiative referendum or recall petitions need not all be appended to one paper, but to each separate petition paper there shall be attached an affidavit of the circulator thereof as provided by this section. Each signer of any such petition paper shall sign his name in ink or indelible pencil and shall indicate after his name his place of residence by street and number, or other description sufficient to identify the place. There shall appear on each petition paper the names and addresses of five electors of the municipality, on each paper the names and addresses of the same five electors, who, as a committee of the petitioners, shall be regarded as responsible for the circulation and filing of the petition. The affidavit attached to the petition shall be as follows:

State of Montana,

City and County of Butte,

} ss.

..... being duly sworn, deposes and says: That he is the circulator of the foregoing paper and that the signatures appended thereto were made in his presence and are the genuine signatures of the persons whose names they purport to be.

Signed
Subscribed and sworn to before me this day of
19.....

.....
Notary Public.

En. Sec. 25, Ch. 160, L. 1923.

5520.146. Assembling, certification and filing of papers. All petition papers comprising an initiative referendum or recall petition shall be assembled and filed with the clerk as one instrument. Within ten days after a petition is filed the clerk shall determine whether it is signed by a sufficient number of electors and shall attach thereto a certificate showing the result of his examination. If he shall certify that the petition is insufficient he shall be set forth in his certificate the particulars in which it is defective and shall at once notify the committee of the petitioners of his findings.

En. Sec. 26, Ch. 160, L. 1923.

5520.147. Amendment of petition. An initiative, referendum or recall petition may be amended at any time within ten days after the making of a certificate of insufficiency by the clerk, by filing a supplementary petition upon additional papers signed and filed as provided in case of an original petition. The clerk shall, within five days after such an amendment is filed, make examination of the amended petition and, if his certificate shall show the petition still to be insufficient he shall file it in his office and notify the committee of the petitioners of his findings and no further action shall be had on such insufficient petition. The finding of the insufficiency of a petition shall not prejudice the filing of a new petition for the same purpose.

En. Sec. 27, Ch. 160, L. 1923.

5520.148. Administrative service—Appointment and removal of manager. The commission shall appoint a manager who shall be the chief executive officer of the municipality. He shall be chosen by the commission solely on the basis of his executive and administrative qualifications and need not when appointed be a resident of the municipality. No member of the commission shall, during the time for which elected, be chosen manager. The manager shall not be appointed for a definite term but shall be removable at the pleasure of the commission. In case the commission determine to remove the manager he shall, if he so demand, be given a written statement of the reasons alleged for the proposed removal and the right to be heard thereon at a public meeting of the commission prior to the date on which his final removal shall take effect, but pending and during such hearing the commission may suspend him from office.

The action of the commission in suspending or removing the manager shall be final, it being the intention of this act to vest all authority and fix all responsibility for any such suspension or removal in the commission. In case of the absence or disability of the manager the commission may designate some responsible person to perform the duties of the office. The manager shall receive such compensation as may be fixed by the commission.

En. Sec. 28, Ch. 160, L. 1923.

5520.149. Responsibility of manager—Appointments. The manager shall be responsible to the commission for the proper administration of the affairs of the municipality placed in his charge and to that end shall appoint all officers and employees in the administrative service of the municipality, except as otherwise provided in this act and except as he may authorize the head of a department or office responsible to him to appoint subordinates in such department or office. Appointments by or under the authority of the manager shall be confined to citizens of the municipality, except in such specific cases as the commission may suspend this requirement, and shall be on the basis of the ability, training and experience of the appointees in the work which they are to perform. All such appointments shall be without definite term unless for temporary service not to exceed sixty days.

En. Sec. 29, Ch. 160, L. 1923.

5520.150. Procedure for removal or suspension officers or employees. Any officer or employees of the municipality appointed by the manager, or upon his authorization, may be laid off, suspended or removed from office or employment either by the manager or the officer by whom appointed. Verbal or written notice of lay-off, suspension or removal given to an officer or employee, or written notice left at or mailed to his usual place of residence, shall be sufficient to put any such lay-off, suspension, or removal into effect unless the person so notified shall, within five days of such notice, demand a written statement of reasons therefor and the right to be heard thereon before the manager. Upon such demand the officer making the lay-off, suspension or removal shall supply the person notified thereof with a written statement of the reasons therefor and the manager shall fix a time and place for the public hearing. Following the public hearing the manager shall either confirm the lay-off, suspension or removal as specified in the notice, reinstate the person so notified in the service, or make such other disposition of the matter as, in his opinion, the good of the service may require. The decision of the manager in any such case shall be final, and there shall be no appeal therefrom to any officer, body or court whatsoever. A copy of the written statement of reasons given for any lay-off, suspension or removal, and a copy of any written reply thereto by the officer or employee involved, together with a copy of the decision of the manager, shall be filed as a public record in the office of the clerk.

En. Sec. 30, Ch. 160, L. 1923.

5520.151. Restrictions on power of commission. Neither the commission nor any of its committees or members shall direct or request the

appointment of any person to, or his removal from office, or employment by the manager or any of his subordinates, or in any manner take part in the appointment or removal of officers and employees in the administrative service of the municipality. Except for the purpose of inquiry, the commission and its members shall deal with that portion of the administrative service for which the manager is responsible solely through the manager and neither the commission nor any member thereof shall give orders to any subordinate of the manager either publicly or privately. Any violation of the provisions of this section by a member of the commission shall be a misdemeanor, conviction of which shall immediately forfeit the office of the member so convicted.

En. Sec. 31, Ch. 160, L. 1923.

5520.152. Duties of manager. It shall be the duty of the manager to supervise the administration of the affairs of the municipality; to see that the ordinances of the municipality and the laws of the state are enforced; to make such recommendations to the commission concerning the affairs of the municipality as may seem to him desirable; to keep the commission advised of the financial conditions and future needs of the municipality; to prepare and submit to the commission such reports as may be required by that body; and to perform such other duties as may be prescribed by this act or be required of him by ordinances or resolutions of the commission.

En. Sec. 32, Ch. 160, L. 1923; Amd. Sec. 2, Ch. 44, L. 1925.

5520.153. Who entitled to be present at meetings. The manager, the directors of all departments, and all other officers of the municipality shall be entitled to be present at all sessions of the commission. The manager shall have the right to take part in the discussion of all matters coming before the commission and the directors and other officers shall be entitled to take part in all discussions of the commission relating to their respective departments and offices.

En. Sec. 33, Ch. 160, L. 1923.

5520.154. Departments—Control by commission. There shall be a department of law, a department of finance, a police department, a department of public works, a department of health, a fire department and such other departments and offices as may be established by ordinance. The commission may change or abolish any department or office established by ordinance and may prescribe, combine, distribute or discontinue the functions and duties thereof. Additional functions and duties may be assigned by ordinance to departments and offices established by this act, but no function or duty assigned by this act to any such department or office shall be discontinued or assigned to any other department or office. If the manager so recommend, and the commission so authorize, the manager may appoint one person to act, or may himself act, as the head of two or more departments or offices; but neither the department of law nor the police department, nor the office of assessor, shall thus be joined with any other department, nor shall the manager be authorized to act as head of either of said departments or offices, or of the

department of finance, nor shall he be permitted to conduct any office in said department of finance other than that of purchasing agent.

En. Sec. 34, Ch. 160, L. 1923; Amd. Sec. 3, Ch. 44, L. 1925.

5520.155. Employment assistants. The number of assistants or other subordinates to be employed in or by each administrative department or office shall be fixed by the commission or by the manager under direction of the commission; provided that nothing herein contained shall authorize said commission or manager to reduce the number of deputies allowed by the general laws of the state to the officers of said municipality performing the duties of county attorney, sheriff and assessor.

En. Sec. 35, Ch. 160, L. 1923; Amd. Sec. 4, Ch. 44, L. 1925.

5520.156. List of employees—Duty of treasurer. The director of finance shall maintain in his office a list of all persons in the administrative service of the municipality, showing in connection with each name the position held, the date of appointment, the character of employment, and the rate of compensation. Each appointing officer shall promptly transmit to the director of finance such information regarding his department or office as may be necessary to keep this list accurate in all respects at all times. The treasurer shall not pay, nor shall the director of finance issue any warrant for the payment of, any salary or compensation to any person whose name does not appear upon such list, nor shall payment be made at a rate other than that specified on such list. Any sums paid contrary to the foregoing provisions of this section may be recovered from any officer paying or authorizing the payment thereof or from the surety on his official bond. If through the failure of any officer to give information to the director of finance as required in this section, or through omission or error in such information, payment is made to any person whose name should not be on such list, or payment is made in excess of the amount which any person whose name is rightfully on the list should receive, then the amount of any such payment or excess payment may be recovered from the officer by reason of whose failure, omission or error the payment or excess payment was made, or from the surety on his official bond.

En. Sec. 36, Ch. 160, L. 1923.

5520.157. Compensation of officers and employees—Schedules. The compensation of officers and employees in the administrative service of the municipality shall be fixed by ordinance, but all positions in such service except those of heads of departments and heads of offices not included within regular departments, shall, for purposes of compensation, be graded and classified by the manager according to duties and responsibilities. The commission shall by ordinance establish a schedule of compensation for the positions so graded and classified which shall prescribe uniform compensation for like service as determined by the grading and classification of the manager. Such schedule of compensation may establish a minimum and maximum for any grade, and an increase in compensation within the limits provided for any grade may be granted by the manager upon the basis of efficiency and seniority. Provided, however, that no such ordinance shall authorize the reduction of any

salaries fixed herein or by the general laws of the state for the officers of said municipality performing the duties of county attorney and his deputies, sheriff and his deputies, and assessor and his deputies.

En. Sec. 37, Ch. 160, L. 1923; Amd. Sec. 5, Ch. 44, L. 1925.

5520.158. Citizens' advisory board. The manager may appoint a board of citizens qualified to act in an advisory capacity to the head of any specified department or office. The members of all such boards shall serve without compensation and it shall be their duty to consult and advise with the officer in charge of the department or office for which they are appointed but not to direct the conduct of such department or office. Public meetings of such boards may be called for the consideration of the affairs of the department or office for which they are appointed.

En. Sec. 38, Ch. 160, L. 1923.

5520.159. Investigation of departments—Subpoenas. The commission, the manager, or any person or committee authorized by either of them, shall have power to inquire into the conduct of any department or office of the municipality and to make investigations as to municipal affairs, and for that purpose may subpoena witnesses, administer oaths, and compel the production of books, papers, and other evidence. It shall be the duty of the manager to designate a police officer to serve such subpoenas. The commission shall provide by ordinance the penalty or penalties for contempt in refusing to obey any such subpoena, or to produce such books, papers and other evidence, and shall have the power to punish any such contempt in the manner provided by ordinance.

En. Sec. 39, Ch. 160, L. 1923.

5520.160. Department of law—Attorney, salary and duties. The department of law shall be in charge of a director who may be styled city and county attorney; he shall be a resident elector of the city and county of Butte, at least thirty (30) years of age, and a member of the bar of this state in good standing; he shall be elected by the electors of said municipality at the same time and in the same manner as members of the commission are elected, shall hold office for two years, and shall receive an annual salary of four thousand (\$4,000) dollars, including any amount paid by the state; he shall have all the powers, either personally or by such deputies or assistants as he may designate, and shall perform all the duties that now are or hereafter may be prescribed by law for county attorneys and for public administrators, and in addition thereto he shall be the chief legal advisor of and attorney and counsel for the municipality and all departments, and offices thereof, and shall perform such other legal duties as may be required by the commission.

En. Sec. 40, Ch. 160, L. 1923; Amd. Sec. 6, Ch. 44, L. 1925.

5520.161. Director of finance—Powers and duties. The director of finance shall have charge of the administration of the financial affairs of the municipality, including the keeping and supervision of all accounts; the custody and disbursement of municipal funds and moneys; the issuance of licenses; the collection of license fees; the control over expendi-

tures, the purchase, storage and distribution of supplies needed by the municipality; and such other duties as the commission may by ordinance require. Except as herein otherwise provided, he shall also have all powers and perform all duties imposed upon county clerks, recorders and auditors by general law.

En. Sec. 41, Ch. 160, L. 1923; Amd. Sec. 7, Ch. 44, L. 1925.

5520.162. Statement of revenues. The director of finance shall prepare and submit to the commission each month a summary statement of revenues and expenses for the preceding month, detailed as to appropriations and funds in such manner as to show the exact financial condition of the municipality and of each department, and office thereof as of the last day of such month.

En. Sec. 42, Ch. 160, L. 1923.

5520.163. Division of audit and account. There shall be in the department of finance a division of audit and accounts of which the director of finance shall himself be the head. As head of such office he shall be charged with keeping the books of financial account for all departments and offices of the municipality and, whenever practicable, such books and accounts shall be kept in the office of the division of audit and accounts. Report shall be made daily to the division of audit and accounts by each department and office showing the receipt of all moneys and the disposition thereof.

En. Sec. 43, Ch. 160, L. 1923.

5520.164. Audit of books of officers when made—Suits to recover. Upon the death, resignation, removal or expiration of the term of any officer of the municipality the director of finance shall cause an audit and investigation of the accounts of such officer to be made and shall report to the manager and the commission. Either the commission or the manager may at any time provide for an examination or audit of the accounts of any officer or department of the municipal government. In case of the death, resignation or removal of the director of finance, the manager shall cause an audit to be made of his accounts. If, as a result of any such audit, an officer be found indebted to the municipality the director of finance, or other person making such audit, shall immediately give notice thereof to the commission, the manager and the director of law and the latter shall forthwith proceed to collect such indebtedness.

En. Sec. 44, Ch. 160, L. 1923.

5520.165. Division of treasury. There shall be in the department of finance a division to the treasury, the head of which shall be treasurer of the municipality, and who shall also perform the duties required of county treasurers by general law. All moneys received by any officer or employee of the municipality for or in connection with the business of the municipality shall be paid promptly into the treasury. The commission shall by ordinance provide for the prompt and regular payment of such money into the treasury and shall also, in the manner herein-

after provided, designate the banking institutions with which it shall be deposited.

En. Sec. 45, Ch. 160, L. 1923.

5520.166. Purchasing agent. There shall be in the department of finance a division of purchases and supplies at the head of which there shall be a purchasing agent. The purchasing agent shall make all purchases for the municipality in the manner, and with such exceptions, as may be provided by ordinance and shall, under such regulations as may be provided by ordinance, sell all property, real and personal, of the municipality not needed for public use or that may have become unsuitable for use. He shall have charge of such storerooms and warehouses of the municipality as the commission may by ordinance provide.

En. Sec. 46, Ch. 160, L. 1923.

5520.167. Supplies, how purchased. Before making any purchase or sale the purchasing agent shall give opportunity for competition, under such rules and regulations as the commission may by ordinance establish. Supplies required by any department or office of the municipality may be furnished upon requisition from the stores under the control of the purchasing agent, and whenever so furnished shall be paid for by the department or office furnished therewith by warrant made payable to the credit of the stores account of the division of purchases and supplies. The purchasing agent shall not furnish any supplies to any department or office unless there be to the credit thereof an available unencumbered appropriation balance sufficient to pay for such supplies.

En. Sec. 47, Ch. 160, L. 1923.

5520.168. Assessor — Election — Qualifications — Duties — Salary. The assessment of all property within the municipality shall be performed by the assessor thereof; the assessor shall be elected by the electors of said municipality at the same time and in the same manner as members of the commission are elected; he shall possess all the qualifications prescribed by the general laws of the state for county assessors; he and his deputies shall have the powers and shall qualify in the manner prescribed by general law for county assessors and deputy assessors; he shall perform all the duties prescribed by the general laws of the state for county assessors, and in addition thereto such other duties as may be prescribed by this act; he shall hold office for two years and receive an annual salary of three thousand five hundred (\$3,500) dollars.

En. Sec. 48, Ch. 160, L. 1923; Amd. Sec. 8, Ch. 44, L. 1925.

5520.169. Tax maps. It shall be the duty of the assessor in assessing property within the municipality to install tax maps and land value maps and to record separately the value of each parcel of land and the value of any building or structure thereon. The tax maps shall show the dimensions of each separately assessed parcel of land, and the land value maps shall show the value per front foot, according to a standard unit of depth, of all land abutting on any street, public way or place within the municipality; but as to acreage tracts and land which does not so abut the land value maps shall show the value per acre. All such

maps and other records of the assessor shall be open to public inspection at all reasonable times.

En. Sec. 49, Ch. 160, L. 1923.

5520.170. Duties assessor as to special assessments. The assessor shall also be in charge of the preparation of all special assessments for public improvements; the giving of notice of such assessments to property owners; and the certification of all unpaid assessments to the director of finance.

En. Sec. 50, Ch. 160, L. 1923.

5520.171. Financial procedure—Budget. The fiscal year of the municipality shall begin with the first day of July and shall end with the next succeeding thirtieth day of June. On or before the fifteenth day of May of each year the manager shall prepare and submit to the commission a budget estimate of the expense of conducting the affairs of the municipality for the ensuing fiscal year. The budget shall be compiled from detailed information obtained from the several departments and offices on uniform blanks furnished by the manager. The classification of the estimate shall be as nearly uniform as possible for the main functional divisions of such departments and offices and shall give the following information:—

(1) A detailed estimate of the expense of conducting each department and office of the municipality for the ensuing fiscal year;

(2) Expenditures for corresponding items for the current and last preceding fiscal years with reasons for increases or decreases recommended as compared with appropriations for the current year;

(3) The value of supplies and materials on hand at the date of the preparation of the estimate;

(4) The total amount of general municipal debt outstanding and also the total debt outstanding of each special district, together with a schedule of maturities of bond issues;

(5) A statement of the amounts which should be appropriated to the sinking fund,

(a) For interest on the general municipal debt,

(b) For paying off any serial bonds maturing during the year,

(c) For the aggregate of the equal installments required to be appropriated annually during the life of all other bonds of the municipality in order to accumulate a fund sufficient to pay off such bonds at maturity.

(d) For similar items on account of the principal and interest of the debt of each special district.

(6) A separate statement indicating any deficiency in the sinking fund and the amount to be appropriated to replace such deficiency as a whole, or the amount of the equal annual installment thereof to be appropriated each year for a specified number of years in order that obligations based on the sinking fund shall be retired as they mature;

(7) An estimate of the amount which should be appropriated for contingent or emergency purposes;

(8) An itemization of all anticipated revenue of the municipality from sources other than taxes;

(9) An estimate of the amount of money to be raised from taxes which, with revenue from other sources, would be necessary to meet the expenditures proposed;

(10) Such other information as the manager may think desirable or as may be required by the commission.

The commission shall provide for printing a reasonable number of copies of the estimate thus prepared for distribution to citizens. Copies shall also be furnished to the newspapers of the municipality and to each library thereof which is open to the public.

En. Sec. 51, Ch. 160, L. 1923.

5520.172. Appropriation ordinance. Upon receipt of the budget estimate the commission shall at once prepare an appropriation ordinance using the budget estimate as a basis. The form, arrangement and itemization of the appropriation ordinance shall be determined and prescribed by the director of finance. Provision shall be made by the commission for public hearings upon the appropriation ordinance before the commission sitting as a committee of the whole. Following the public hearings the appropriation ordinance shall take the same course in the commission as other ordinances but shall not be passed before the first meeting of the commission in July. Upon final passage the appropriation ordinance shall be published in the manner provided for other ordinances.

En. Sec. 52, Ch. 160, L. 1923.

5520.173. Tax levy. After the passage of the annual appropriation ordinance by the commission, and as soon as may be after the state board of equalization shall have transmitted to the municipality its statement of any changes made in the assessment-book of the municipality or of any assessment contained therein, the director of finance shall report in writing to the commission the rate of tax levy required for the municipality in general, and for each special district, to produce an amount of revenue which, together with estimated revenue from other sources, will equal the appropriations made for the municipality as a whole and for each such district. Upon receipt of the report of the director of finance, the commission shall by ordinance levy taxes upon all the taxable property in the municipality, and upon each special district thereof, at the rate specified in such report unless, by amendment of the appropriation ordinance and a reduction of the appropriations the levy of a lower rate be made possible; but no such amendment shall reduce the appropriations made to the sinking fund as recommended by the manager. If the commission determine by amendment and reduction of its appropriations to provide for a lower rate of tax levy the director of finance shall, upon the completion of such amendment and reduction, likewise report to the commission the rate of tax levy required under such amended ordinance, and the commission shall not levy taxes at any other rate than that reported to be required by the director of finance in accordance with the provisions in this section.

En. Sec. 53, Ch. 160, L. 1923.

5520.174. Limitation on tax levy. No ordinance making the annual tax levy and fixing the rate to be levied upon all property within the

municipality at more than fifteen mills on each dollar of the taxable valuation shall be passed except by the affirmative vote of at least six members of the commission, and such tax levy made by the commission shall not exceed twenty mills unless the question of levying a higher tax rate for a specified year or years be submitted to the electors of the municipality and approved by a majority of those voting thereon; but in no case shall such total tax levy be more than twenty-five mills.

En. Sec. 54, Ch. 160, L. 1923.

5520.175. Special districts—Limitation on taxes. The commission may by ordinance designate clearly specified districts in or for which special services are to be performed and may levy upon the property in any such district such tax, in addition to any taxes authorized by section 54 of this act, as may be necessary to pay the cost of such special service or services. Any such additional tax levied under the authority of this section upon the property within any district shall not exceed ten mills unless the portion of the annual tax levy ordinance providing therefor shall have been separately voted on and passed by the affirmative vote of at least six members of the commission, and shall not exceed fifteen mills unless the question of levying a higher rate for a specified year or years shall have been submitted to the electors of the district and approved by a majority of those voting thereon; but in no case shall such additional levy be more than twenty mills.

En. Sec. 55, Ch. 160, L. 1923.

5520.176. Tax limits, application of. The tax limits provided by sections 54 and 55 of this act shall apply only to taxes levied for purposes other than to provide for paying the interest and principal of the debt of the municipality or any district thereof. Taxes required by this act to be levied on account of the debt of the municipality, or any district thereof, shall not be affected by such limits nor shall such taxes be considered in determining the limits of taxation fixed by sections 54 and 55 of this act.

En. Sec. 56, Ch. 160, L. 1923.

5520.177. Collection of taxes. All taxes levied by the municipality shall be collected and payable in the manner, at the time and under the penalties prescribed by law for the collection and payment of state and county taxes.

En. Sec. 57, Ch. 160, L. 1923.

5520.178. Continuation existing districts—Tax levy for. The district comprised within the boundaries of any city, town or district existing within the county at the time of the adoption of this act by the electors thereof shall, for the purpose of paying the interest and principal of any debt incurred by such city, town or district prior to such adoption, be continued as a special district until such debt shall have been paid, and the commission shall, in the annual tax levy ordinance, levy upon the property within each such district such tax, in addition to all other taxes, as the director of finance shall report to be necessary to provide for paying the interest on each such debt as it falls due and the

principal thereof as it matures, and no other property within the municipality shall be taxable or made liable for the payment of any such debt. The commission shall likewise provide in the annual tax levy ordinance for the levy of such tax upon all property within the municipality as the director of finance shall report to be necessary to provide for paying the interest as it falls due and the principal as it matures of any debt of the municipality as a whole. The tax levy for the debt of the municipality as a whole, and the tax levy for the debt of each such district, shall each be a separate levy and shall be distinct from and in addition to all other tax levies, and the proceeds of each such tax levy shall be placed in a separate fund for the payment of the interest and principal of the debt for which the tax was levied.

En. Sec. 58, Ch. 160, L. 1923.

Under this section creditors of the county, city and town consolidated under one government who became so before consolidation are fully protected, and that therefore the claim that the effect

of the act is to deprive them of their security for the payment of their claims and thus to impair the obligations of their contracts has no merit. State ex rel. Corry v. Cooney et al., 70 Mont. 355, 225 Pac. 1007.

5520.179. Effect of general tax laws. The provisions of any general law authorizing counties, cities or towns to levy taxes for a specified purpose and at not to exceed a specified rate shall not limit the city and county of Butte in its expenditures for any purpose so specified. Any tax for county purposes required by the general laws of Montana to be levied by counties shall be included in the tax rate fixed for all property within the municipality, and the commission shall include in the annual appropriation ordinance an appropriation for the purpose for which such tax is required to be levied in the amount which the director of finance estimates that such tax would yield if separately levied.

En. Sec. 59, Ch. 160, L. 1923.

5520.180. Transfer of balances. Upon the written recommendation of the manager the commission may at any time transfer an unencumbered balance of an appropriation made by the commission to a purpose or object for which the appropriation for the current year has proved insufficient, or may authorize a transfer to be made between items appropriated for the same department or office.

En. Sec. 60, Ch. 160, L. 1923.

5520.181. Money, how drawn from treasury—Reversion of balances. No money shall be drawn from the treasury of the municipality, nor shall any obligation for the expenditure of money be incurred, except in pursuance of the annual appropriation ordinance as passed by the commission, or of such ordinance changed as authorized by the next preceding section of this act. At the close of each fiscal year any unencumbered balance of an appropriation shall revert to the fund from which appropriated and shall be subject to re-appropriation; but appropriations may be made by the commission, to be paid out of the revenues of the current year, in furtherance of improvements or other objects or works which will not be completed within such year, and any such appropriation shall continue in force until the purpose for which it was made shall have been accomplished or abandoned.

En. Sec. 61, Ch. 160, L. 1923.

5520.182. Accounts to be kept. Accounts shall be kept for each item of appropriation made by the commission, and every warrant on the treasury shall state specifically against which of such items the warrant is drawn. Each such account shall show in detail the appropriations made thereto, the amount drawn thereon, the unpaid obligations charged against it, and the unencumbered balance to the credit thereof.

En. Sec. 62, Ch. 160, L. 1923.

5520.183. Claims, how paid. No claim against the municipality shall be paid except by means of a warrant on the treasury issued by the director of finance. The director of finance shall issue no warrant for the payment of a claim unless the claim be evidenced by a voucher approved by the head of the department or office for which the indebtedness was incurred, and each such officer and his surety shall be liable to the municipality for all loss or damage sustained by reason of his negligent or corrupt approval of any claim.

En. Sec. 63, Ch. 160, L. 1923.

5520.184. Examination of pay-rolls. The director of finance shall examine all pay-rolls, bills and other claims and demands against the municipality and shall issue no warrant for payment unless he finds that the claim is in proper form, correctly computed and duly approved; that it is legally due and payable; that an appropriation has been made therefor which has not been exhausted; and that there is money in the treasury to make payment. He may investigate any claim and for that purpose may summon before him any officer, agent or employee of the municipality, any claimant or other person, and examine him upon oath or affirmation relative thereto, and if he finds a claim to be fraudulent, erroneous or otherwise invalid, he shall not issue a warrant therefor. If the director of finance issue a warrant on the treasury authorizing payment of any claim in contravention of the provisions of this section he and his sureties shall be individually liable to the municipality for the amount of such warrant if paid.

En. Sec. 64, Ch. 160, L. 1923.

5520.185. Certification of director before making contracts. No contract, agreement or other obligation, other than contracts pertaining to work or improvements to be paid for by special assessments, involving the expenditure of money out of appropriations made by the commission shall be entered into, nor shall any order for such expenditure be valid, unless the director of finance shall first certify to the commission that the money required for such contract, agreement or obligation is in the treasury to the credit of the appropriation from which it is to be drawn and that it is otherwise unencumbered. The certificate of the director of finance shall be filed and made a matter of record in his office, and the sum so certified as being in the treasury shall not thereafter be considered unencumbered until the municipality is discharged from the contract, agreement or obligation.

En. Sec. 65, Ch. 160, L. 1923.

5520.186. What to be credited to appropriations. All unencumbered moneys actually in the treasury to the credit of the appropriation from which an obligation is to be paid, and all moneys applicable to its payment that, before the maturity thereof, are anticipated to come into the treasury to the credit of such appropriation from taxes or assessments; from sales of service, products or by-products of any municipal undertaking; from the sale or lease of lands or other property; and from the sale of bonds lawfully authorized at the date of the certificate of the director of finance shall, for the purpose of such certificate, be deemed in the treasury to the credit of the appropriation for which the obligation is to be paid.

En. Sec. 66, Ch. 160, L. 1923.

5520.187. Contracts, when void. All contracts, agreements or other obligations entered into, all ordinances and resolutions passed, and orders adopted, contrary to the provisions of section 65 and 66 of this act shall be void, and no person whatever shall have any claim or demand against the municipality thereunder, nor shall the commission or any officer of the municipality waive or qualify the limitations fixed by such sections, or fasten upon the municipality any liability whatever in excess thereof.

En. Sec. 67, Ch. 160, L. 1923.

5520.188. Designation of depositories—Bonds. On or before the first day of August of each year the commission shall designate the banks subject to state or national supervision in which the funds of the municipality shall be deposited. In designating such banks the commission shall specify the maximum amount of municipal funds that may be kept at any time in each. Unless a bank designated as a depository shall elect to deposit securities with the treasurer, as provided in the next succeeding section, it shall give good and sufficient bonds, with sureties to be approved by the commission, conditioned for the safekeeping and payment of the municipal funds deposited therewith and the interest thereon. Any such bonds of a depository shall be in the aggregate equal to the amount designated by the commission as the maximum of municipal funds which may at any time be kept by such depository.

En. Sec. 68, Ch. 160, L. 1923.

5520.189. Deposit of securities — Interest. In lieu of the surety bonds specified in the next preceding section any bank designated as a depository of city funds may deposit with the treasurer bonds of the class and kind in which, by the provisions of this act, the sinking fund of the municipality may be invested. Bonds so deposited shall be in an amount equal to the amount of municipal funds permitted at any time to be deposited with such bank, shall be approved by the commission and shall be accompanied by proper assignment, to the end that the bank so depositing and assigning such bonds will safely keep and pay over to the treasurer, or his order, on demand and free of exchange, all moneys at any time deposited therein with interest thereon at the rate agreed upon, and that in case of default on the part of such bank the commission shall have power and authority to sell such bonds or so much thereof as may

be necessary to realize the full amount of the funds deposited therein. The bank shall be entitled to interest on the securities so deposited with the treasurer, when paid, and to the return of the securities at the termination of such trust so long as the bank is not in default. With the approval of the commission a bank may at any time substitute other like securities of equal value for those so deposited.

En. Sec. 69, Ch. 160, L. 1923.

5520.190. New bonds, when required. Whenever for any cause the commission shall deem the bonds or securities of any bank insufficient security for the municipal funds deposited or likely to be deposited therein the commission shall require new bonds to be given or new securities to be deposited with the treasurer. If any bank shall fail promptly to execute and present such new bonds, or deposit such new securities, the treasurer shall at once withdraw all deposits therefrom and no further deposit of municipal funds shall be made therein until such bank shall have been redesignated by the commission as a depository.

En. Sec. 70, Ch. 160, L. 1923.

5520.191. Continuation of security. All surety bonds given by a bank in accordance with the provision of this act shall continue in force so long as funds of the municipality deposited therein shall be unpaid. Nothing herein provided shall impair the rights and remedies of the municipality on such bonds under the laws of the state. Bonds and other securities given by banks in accordance with this act shall be entered in a record to be kept for that purpose by the director of finance and deposited with the treasurer for safe keeping. The record of such bonds and securities kept by the director of finance, or copies thereof certified by that officer, shall be competent and prima facie evidence of the contents and tenor thereof.

En. Sec. 71, Ch. 160, L. 1923.

5520.192. Deposit of funds. All funds received by the treasurer shall be deposited by him in the designated banks in the name of the municipality subject to the order of the treasurer, and shall be distributed among the designated banks as nearly as may be in proportion to the several maximum amounts which they have been authorized to receive by the commission.

En. Sec. 72, Ch. 160, L. 1923.

5520.193. Interest on daily balances. Banks designated as depositories shall pay interest on daily balances of municipal funds at a rate approved by the commission which shall in no case be less than two and one-half per centum (2½%). The interest due on such deposits shall be paid to the treasurer by check on the last day of each quarter of the fiscal year. If the treasurer shall at any time receive, or have in any bank, funds which will probably remain on deposit three months or longer he may, with the approval of the commission, either take therefor certificates of deposit from a designated depository, payable to his order on demand, and bearing a higher rate of interest, or invest such funds in

any bonds maturing within six months in which the sinking fund of municipality may be invested. The treasurer shall make a monthly statement to the director of finance of the municipal funds in each bank, and the interest received thereon, as of the last day of each month, and the director of finance shall include such information in his monthly statement to the commission required by section 42 of this act.

En. Sec. 73, Ch. 160, L. 1923.

5520.194. Payments by check. No bank receiving funds of the municipality on deposit shall have authority to pay out any such money except upon checks drawn upon that bank, signed by the treasurer.

En. Sec. 74, Ch. 160, L. 1923.

5520.195. Liability of treasurer. When the funds of the municipality are deposited and kept in designated banks according to the provisions of this act the treasurer and the sureties on his official bond shall be exempt from all liability for the loss of any funds so deposited if such loss is caused by the failure, bankruptcy, or any other act or default of such banks, but the want of care or due diligence on the part of the treasurer or commission in protecting the municipality against loss, shall not exempt the treasurer, the members of the commission or sureties on their respective bonds from liability. Nothing herein provided shall deprive the municipality of any right or remedy against any defaulting bank or against its officers or stockholders.

En. Sec. 75, Ch. 160, L. 1923.

5520.196. Limitation on indebtedness. The city and county of Butte shall not become indebted in any manner, or for any purpose, to an amount, including existing indebtedness, in the aggregate exceeding five per centum (5%) of the value of the taxable property therein as ascertained by the last assessment for state and county taxes prior to incurring such indebtedness, and all bonds or obligations in excess of such amount given by or on behalf of the municipality shall be void. Bonds, notes, or registered warrants on the treasury, may be authorized by the commission to be issued during the first five months of the fiscal year in anticipation of the collection of taxes for such year and shall not be deemed the creation of a debt within the meaning of this section; but any such bond, note or warrant so authorized and issued shall specify that it is payable solely out of the revenues of the fiscal year in which issued, and before the close of such year, shall not bear a higher rate of interest than six per centum (6%) and the total amount authorized and issued in any fiscal year shall not, in the aggregate, be more than thirty-five per centum (35%) of the total appropriations of the municipality for such year.

En. Sec. 76, Ch. 160, L. 1923.

5520.197. Procedure to borrow money—Funding obligations. The city and county of Butte may borrow money for any municipal purpose to the extent and in the manner provided by the constitution and laws of Montana for the borrowing of money by counties. Any debt of the county or any district thereof outstanding at the beginning of the first

fiscal year after the adoption of this act by the electors of the county may be funded, or refunded, by the issuance of bonds for such period, or periods, not exceeding twenty years as the commission may authorize, and thereafter the debt so funded or refunded, and any debt subsequently incurred, shall be paid as it becomes due without refunding.

En. Sec. 77, Ch. 160, L. 1923.

5520.198. Appropriations for sinking fund. An appropriation to the sinking fund of the municipality at least equal to the amount, or amounts, estimated by the manager to be required for that purpose in conformity with subdivisions (5) and (6) of section 51 of this act, shall be included in each annual appropriation ordinance passed by the commission. If, for any reason, the commission fail to include such an appropriation in its annual appropriation ordinance, or shall appropriate to the sinking fund less than that estimated by the manager to be required for that purpose, the director of finance shall nevertheless cause to be set up an appropriation account for the full amount so estimated by the manager and shall, notwithstanding any other appropriation made by the commission, transfer to such account out of any moneys of the municipality derived from taxes and paid into the treasury such amount, or amounts, as may be necessary to bring the appropriation for the sinking fund up to the full amount of the manager's estimate. Any taxpayer of the municipality, or the owner of any bond thereof, may bring suit against the director of finance in the district court to enforce the provisions of this section and if, upon such suit, it be found that the commission has failed to make an appropriation for the full amount estimated by the manager to be required for the sinking fund and that the director of finance has failed to set up the appropriation account and provide for transfers thereto as required by this section, the court shall order the establishment of such appropriation account and the necessary transfers thereto as hereinbefore provided. Any such action by the court shall have the same force and effect in regard to appropriations to the sinking fund as though taken by the commission in its annual appropriation ordinance.

En. Sec. 78, Ch. 160, L. 1923.

5520.199. Sinking fund board—Appointment and powers. The sinking fund of the municipality shall be in charge of a sinking fund board consisting of the president, the director of finance and the director of law. The president shall be the chairman and the director of finance the secretary of the board. By and with consent of the commission the sinking fund board shall invest the sinking fund in bonds or certificates of indebtedness of the United States; state bonds or certificates of indebtedness of Montana or any other state of the United States; bonds of the city and county of Butte; notes and registered warrants on the treasury of such city and county issued in anticipation of the collection of taxes as authorized by section 76 of this act; bonds of any city in the state of Montana; and in such county or school bonds of Montana as may be approved by the commission. In case the sinking fund be invested in bonds of the city and county of Butte such bonds shall not be canceled

before maturity but shall be held by the sinking fund board and the interest thereon paid over and applied to the increase of the sinking fund. Whenever the principal of any of the bonds of the municipality shall become due the sinking fund board shall, with the consent of the commission, dispose of such of the bonds belonging to the sinking fund as, with the money on hand belonging to the sinking fund, shall be necessary to pay the bonds so becoming due.

En. Sec. 79, Ch. 160, L. 1923.

5520.200. Award of contracts—Advertisement. All contracts entered into by the municipality for supplies, or materials, for any public work, or for the construction, reconstruction, repair, maintenance or operation of any public works or improvements shall be awarded to the lowest responsible bidder after public advertisement and competition as may be prescribed by ordinance, but the manager shall have the right to reject all bids and advertise again. All advertisements as to contracts shall contain a reservation of the foregoing right. All contracts entered into by the municipality shall be signed by the manager after approval thereof by the commission.

En. Sec. 80, Ch. 160, L. 1923.

5520.201. Alteration in contracts. When it becomes necessary in the opinion of the manager to make alterations or modifications in any contract entered into by the municipality such alterations shall be made only when authorized by the commission upon the written recommendation of the manager. No such alteration shall be valid unless the new price to be paid for any supplies, material or work under the altered or modified contract shall have been agreed upon in writing and signed by the contractor and the manager prior to such authorization by the commission.

En. Sec. 81, Ch. 160, L. 1923.

5520.202. Police department—Director, powers, duties and salary. The police department shall be in charge of a director who may be styled the sheriff; he shall be elected by the electors of the municipality at the same time and in the same manner as members of the commission are elected; he shall possess all the qualifications prescribed by general law for sheriffs, shall hold office for two years, and shall receive an annual salary of five thousand (\$5,000) dollars; he shall be chief of the police force of the municipality, and shall also have the powers and perform the duties prescribed for sheriffs by the general laws of the state. Officers and patrolmen of the police department, subordinate to the director shall have the powers and perform the duties conferred on and required of policemen in cities and towns by the laws of the state, such powers and duties as may be conferred and required by the ordinances of the city and county of Butte, and shall also have the powers and perform the duties by law conferred on and required of deputy sheriffs. The provisions of the Metropolitan Police Laws of the state shall be in full force and effect so far as practicable under this act.

En. Sec. 82, Ch. 160, L. 1923; Amd. Sec. 9, Ch. 44, L. 1925.

5520.203. Department of public works—Director. The department of public works shall be in charge of a director who shall manage and have charge of the construction, repair, improvement and maintenance of all public buildings, of roads, streets, alleys, sidewalks, bridges, viaducts and other public ways; of sewers, drains, ditches, culverts, streams and water-courses; and of boulevards, parks, playgrounds, cemeteries and other public places and grounds dedicated to public use. He shall manage and control all public cemeteries, crematories, market places or houses, garbage and sewage disposal plants and farms, and all public utilities belonging to the municipality or any subdivision thereof, and shall have charge of the enforcement of the obligations to the municipality of all privately owned or operated public utilities enforceable by the municipality. He shall have charge of the cleaning, sprinkling, and lighting of the streets and the collection and disposal of garbage and waste. He shall also be responsible for the making and preservation of all surveys, maps, plans, drawings and estimates for such public works, and for the preservation of contracts, papers, plans, tools, and appliances belonging to the municipality and pertaining to the functions of the department.

En. Sec. 83, Ch. 160, L. 1923.

5520.204. Qualifications and powers. The director of public works shall have the qualifications prescribed by law for county surveyors and, in addition to the duties required by this act and by the ordinances of the municipality, he shall have the powers and shall, either in person or by a deputy having the qualifications prescribed by law for county surveyors, perform the duties required of county surveyors by the laws of the state.

En. Sec. 84, Ch. 160, L. 1923.

5520.205. Department of health. The director of the department of health shall be a physician legally authorized to practice medicine and surgery in the state of Montana. Except as otherwise provided in this act the director of the department of health shall have the powers and perform the duties conferred on and required of coroners and county health officers by the general laws of the state. He shall also have such other powers and perform such other duties as may be prescribed by ordinance.

En. Sec. 85, Ch. 160, L. 1923.

5520.206. County board of health. The commission shall be the county board of health in and for the city and county of Butte, but in performing the duties and exercising the powers prescribed by law for such boards the commission shall act by ordinance, resolution or vote and according to the procedure prescribed by this act to be followed when acting as commission of the municipality, and it shall not be necessary to the validity of any such action for the commission to declare, or for the records thereof to indicate, that it is acting in other than its usual capacity. Regulations affecting the public health, additional to those

established by general law, and for the violation of which penalties are imposed, may be prescribed by ordinance and enforced as provided therein.

En. Sec. 86, Ch. 160, L. 1923.

5520.207. Fire department. The fire department of the city and county of Butte shall be in charge of a director who shall be chief thereof and who shall manage and control the department in the manner prescribed by the ordinances of the municipality.

En. Sec. 87, Ch. 160, L. 1923.

5520.208. Continuation firemen's disability funds. Any disability fund, or funds, of the fire department or departments, established as required by law in any city or town of the county prior to the election and qualification of a commission under this act, shall be continued as one such fund for the fire department of the city and county of Butte. The board of trustees of such disability fund shall consist of the president, the director of finance, the director of law, the director of the fire department and one member of the fire department selected by a majority of the members of such department between the first and tenth days of July of each year in which the municipality shall elect a commission. Except as provided in this section, the disability fund of the fire department shall be continued and administered in the manner prescribed by law for such funds established in cities and towns.

En. Sec. 88, Ch. 160, L. 1923.

5520.209. Superintendent of schools. The commission shall, by majority vote of all its members, appoint a municipal superintendent of schools to serve without definite term but subject to removal at the pleasure of the commission. The superintendent of schools for any district within the municipality may, with the consent of the trustees of such district, be appointed to serve as municipal superintendent. The compensation of the municipal superintendent shall be fixed by the commission, and he shall have the powers and perform the duties prescribed for county superintendents of schools by the laws of the state.

En. Sec. 89, Ch. 160, L. 1923.

5520.210. Police court and police judge. A police court is hereby established in and for the city and county of Butte, with jurisdiction, powers and duties within the municipality provided by general law for police courts in cities and towns. The commission shall by a majority vote of all its members appoint a police judge to serve during the pleasure of the commission; no person shall be appointed police judge unless at least twenty-five (25) years of age; the compensation of police judge shall be fixed by the commission. Provided that nothing herein contained shall be construed as in anywise interfering with the existence, election, powers or duties of justices of the peace as provided by the general laws of this state.

En. Sec. 90, Ch. 160, L. 1923; Amd. Sec. 10, Ch. 44, L. 1925.

5520.211. Public work and improvements. Any local public work may be done or any local public works or improvements may be con-

structed, reconstructed, repaired, maintained or operated either by contract or directly by the municipality as may be determined by the commission. Before authorizing that any local public works or improvements be directly constructed, reconstructed, repaired, maintained or operated, detailed plans and estimates for each such work or improvement shall be submitted to the commission by the manager, and there shall be separate accounting for each work or improvement so executed.

En. Sec. 91, Ch. 160, L. 1923.

5520.212. Creation special improvement districts—Procedure. The city and county of Butte shall have the same power and authority to create special improvement districts, and for like purposes, as provided by the laws of the state for counties, cities, and towns. Before creating any special improvement district, or proceeding with any work or improvement to be paid for in whole or in part by assessments upon property benefited thereby, the commission shall declare by resolution its intention so to do. Any such resolution shall set forth the boundaries of the proposed district, give a general description of the work or improvement contemplated and shall direct the manager to have a report prepared thereon. The resolution shall also specify the portion of the cost of the work or improvement to be assessed against the property within the proposed district and the number of installments, not exceeding ten, in which the assessments are to be paid.

En. Sec. 92, Ch. 160, L. 1923.

5520.213. Report. The report prepared as provided in the next preceding section shall include all necessary surveys, plans, profiles and specifications; estimates of the value of any land or other property proposed to be taken; estimates of the cost of any proposed action, work or improvement; and estimates of the amount of benefits or damages which should be assessed against or in favor of any property affected. A copy of the report, when completed, shall be placed on file for public inspection in such office of the municipality as the manager may designate.

En. Sec. 93, Ch. 160, L. 1923.

5520.214. Notice to property owners. Upon the completion and filing of the report as provided in the next preceding section the assessor shall give notice to every person, firm or corporation having property within the proposed district, or the agent thereof, by mailing a notice to each such person, firm, corporation or agent, at his last known address, and shall also publish such notice at least once in a daily paper of general circulation in the municipality. The notice so mailed and published shall contain a description of the boundaries of the proposed improvement district, a description of the work or improvement contemplated, shall state where the report has been filed and that it is open to public inspection, and shall designate the time when and the place where the commission will hear and pass upon all protests that may be made against the making of the improvement, the doing of the work, the creation of the district specified in the notice, or against any assessment of benefits or damages as set forth in the report of the manager. Any such meeting of the com-

mission shall not be sooner than ten days after the assessor shall have completed the mailing and publication of notice as provided in this section.

En. Sec. 94, Ch. 160, L. 1923.

5520.215. General laws applicable. Except as hereinbefore provided, and except that the director of public works shall be the engineer in charge of all such work, works or improvements, the provisions of the general law of the state regarding special improvement districts in cities and towns shall apply to and control the establishment under this act of special improvement districts in and for the city and county of Butte, and the procedure according to which any local public work or the construction, reconstruction, repair, maintenance or operation of any local public work or improvement is to be provided for when the cost thereof is to be paid in whole or in part by assessments upon the property within any such district, and such general law shall also apply to the manner of levying and collecting such assessments.

En. Sec. 95, Ch. 160, L. 1923.

5520.216. Powers and duties of officers before and after adoption act. For any election held on the question of the adoption of this act and for the first election of officers thereunder adopted, the county clerk and board of county commissioners of Silver Bow county shall exercise the powers and perform the duties respecting elections prescribed for county clerks and boards of county commissioners by the general laws of the state. After the adoption of this act by the electors of the county and the first election of officers hereunder, all the duties prescribed by the general laws of this state relating to the registration of electors, shall devolve upon the clerk of the commission, and all the powers and duties of city and county clerks, boards of aldermen and county commissioners, relating to elections under the general laws of this state shall devolve upon an electoral board, constituted as hereinafter provided; except as otherwise provided in this act all the provisions of the general laws of this state relating to elections shall apply to all elections held within the city and county of Butte.

En. Sec. 96, Ch. 160, L. 1923; Amd. Sec. 11, Ch. 44, L. 1925.

5520.217. Electoral board—Precincts—Judges—Conduct of elections. There shall be an electoral board for the municipality consisting of two members who, with the clerk of the commission, shall comprise the electoral board. The said members shall be elected for a term of four years, provided, however, that at the first election after the adoption of this act one member shall be elected for a term of two years and one shall be elected for a term of four years (candidates shall designate the term desired when filing); after which one member of said electoral board shall be elected every two years, for a term of four years. No member of the electoral board shall be employed by the municipality in any other capacity while holding such office. It shall be the duty of the electoral board to divide the municipality into election precincts, each to include not more than five hundred qualified electors. The electoral board shall appoint three judges in each precinct, all to be qualified electors and all

over twenty-five (25) years of age, and one of opposite political faith from the other two. Precinct judges shall appoint two clerks of opposite political faith. The board shall, for the period of forty (40) days next preceding any election, have general supervision of the registers and precinct poll-books and it shall be their duty to purge therefrom and from all published lists of electors all names improperly appearing thereon; the said board shall also have exclusive control, subject to the provisions of the general laws of the state, of the holding of elections, canvassing of returns and the issuing of certificates of election. Within five (5) days after an election the said board shall meet to canvass returns and shall issue the certificates of election required by law; such meetings shall be open to the public, and in the case of a tie vote the said electoral board shall cast lots among those persons having tie votes, to decide the result. The two members of said board to be elected shall be electors of the municipality at the time of their election, and shall be not less than twenty-five years of age; they shall be paid ten (\$10) dollars per day for such time as they are actively employed in the preparation of elections, the conduct of elections, the canvassing of election returns, and the issuing of certificates of such elections, and shall receive no other compensation. Additional rules and regulations governing the services and functions of the said electoral board and providing the necessary equipment therefor may be provided by ordinance.

En. Sec. 97, Ch. 160, L. 1923; Amd. Sec. 12, Ch. 44, L. 1925.

5520.218. Municipal primary elections. A municipal primary election for the choice of officers to be elected under this act shall be held on the last Tuesday of April next following the adoption of this act by the voters of Silver Bow county and on the last Tuesday in April of every second year thereafter. All candidates for the commission receiving a majority of the votes cast at the municipal primary election shall be deemed and declared elected to the commission. A municipal election shall be held on the first Tuesday in June next following the primary election to fill the remaining places on the commission and elect the other officers provided for herein. At all municipal elections the polls shall be open from 8 A. M. to 6 P. M.

En. Sec. 98, Ch. 160, L. 1923; Amd. Sec. 13, Ch. 44, L. 1925.

5520.219. Nominations by petition—Affidavits. Any elector of the city and county of Butte eligible to any office of the municipality to be filled by election may be placed in nomination therefor by petition filed with the clerk and signed by at least three hundred (300) electors of the municipality. The signatures to a nominating petition need not all be appended to one paper, but to each separate paper there shall be attached an affidavit of the circulator thereof stating that each signature appended thereto was made in his presence and is the genuine signature of the person whose name it purports to be. Each signer of a petition shall sign his name in ink or indelible pencil, and, after his name, shall designate his residence by street and number or other description sufficient to identify the place, and give the date when his signature was made. No

elector shall sign petitions for more candidates for any office than the number of places to be filled therein at the forthcoming primary election.

En. Sec. 99, Ch. 160, L. 1923; Amd. Sec. 14, Ch. 44, L. 1925.

5520.220. Form of nominating petition. The form of nominating petition papers shall be substantially as follows:

We, the undersigned electors of the city and county of Butte, hereby nominate whose residence is for the office of commissioner, to be voted for at the primary election to be held on the last Tuesday of April, 19....; and we individually certify that we are qualified to vote for candidates for the above office and that we have not signed nominating petitions for more than seven candidates for the commission.

Name.	Residence (Street and Number) or Description to Identify Place	Date.
.....
.....
.....

State of Montana, }
City and County of Butte. } ss.

..... being duly sworn deposes and says that he is the circulator of this petition paper, that the signatures appended thereto were made in his presence and are the genuine signatures of the persons whose names they purport to be.

Signed

Subscribed and sworn to before me this day of 19.....

.....
Notary Public.

En. Sec. 100, Ch. 160, L. 1923.

5520.221. Filing papers—Notice to nominee. All separate papers comprising a nominating petition shall be assembled and filed with the clerk as one instrument at least thirty days prior to the next succeeding last Tuesday in April. Within five days after the filing of the nominating petition the clerk shall notify the person named therein as a candidate whether such petition is signed by the required number of qualified electors. Any eligible person placed in nomination as herein-before provided shall have his name printed on the ballots and placed upon any voting machine used at the primary election if, within five days after such notifications, he shall have filed with the clerk a written acceptance of the nomination.

En. Sec. 101, Ch. 160, L. 1923.

5520.222. Party designation forbidden. No party mark or designation shall appear on the ballots, or in connection with the names of candidates on any voting machine, used in the election of members of

the commission. Each elector may vote for as many candidates for the commission as there are places to be filled therein; but any ballot marked for more candidates than the number of places to be filled shall not be counted for any of the candidates for which marked. The ballots shall be in form substantially as follows:—

<p>MUNICIPAL ELECTION City and County of Butte. (Month and day of month) 19.... FOR COMMISSIONERS. Do not vote for more than</p>

En. Sec. 102, Ch. 160, L. 1923.

5520.223. Order names of candidates. At 2 o'clock P. M. on the tenth day before any election at which officers of the municipality are to be chosen, the electoral board shall publicly determine by lot the order in which names of candidates for election shall be printed on the ballots or appear on any voting machine, to be used at such election.

En. Sec. 103, Ch. 160, L. 1923; Amd. Sec. 15, Ch. 44, L. 1925.

5520.224. Voter may write names on ballot. As many blank spaces shall be left on the ballots below the printed names of candidates for the commission as there are places to be filled therein. In any such space an elector may write the name of any eligible person, and a vote cast for such person shall be counted as though for a candidate whose name is printed on the ballots.

En. Sec. 104, Ch. 160, L. 1923.

5520.225. Publication notices of election. On the tenth day prior to the municipal primary election, the electoral board shall cause notice thereof to be published in such daily newspaper, or newspapers of general circulation in the municipality as the said board may have designated. In case the said board shall fail to designate such newspaper or newspapers, the clerk shall cause the notice to be published in such newspaper, or newspapers, of general circulation in the municipality as he may select. Such published notice shall contain a list of the candidates nominated as hereinbefore provided, and state the time of holding the election. On the fifth day prior to a municipal election held on the first Tuesday in June, the electoral board or the clerk, under like conditions, shall cause a similar notice to be published concerning that election. The electoral board may also provide for giving notice of such elections by other means.

En. Sec. 105, Ch. 160, L. 1923; Amd. Sec. 16, Ch. 44, L. 1925.

5520.226. Elections—Contents of ballot—Tie vote. At any municipal election held for the choice of officers of the municipality to be elected under this act, and following a municipal primary, there shall be printed

on the ballots and placed on the voting machines the names of the two candidates who at said primary received the highest number of votes for city and county attorney, and the names of the two candidates who at said primary received the highest number of votes for sheriff, and the names of the two candidates who at said primary received the highest number of votes for assessor; and the names of the two candidates who at said primary received the highest number of votes for members of the electoral board, if there be two or more candidates for the respective offices voted for at said primary election; except at the first election the names of the four candidates for members of the electoral board, if there be so many voted for at the primary election, receiving the highest number of votes shall be placed upon the ballot; there shall also be printed on the ballots and placed on the voting machines the names of the candidates for members of the commission who at said primary received the highest number of votes, except the names of those elected at said primary, and the number of names so printed on the ballots and placed on the voting machines shall be double the number of places remaining to be filled in the commission. If, by reason of their having received the same number of votes, it cannot be determined which of two or more candidates shall have his name, or their names, printed on the ballots or places on the voting machines, then, notwithstanding the foregoing provisions of this section, the names of all such candidates receiving the same number of votes shall be printed on the ballots and placed on the voting machines. The candidates for the commission at an election held on the first Tuesday in June, equal in number to the places remaining to be filled in the commission, who receive the highest number of votes, shall be declared elected. A tie between two or more candidates shall be decided by lot in the presence of such candidates and under the direction of the electoral board.

En. Sec. 106, Ch. 160, L. 1923; Amd. Sec. 17, Ch. 44, L. 1925.

5520.227. The recall. Any member of the commission may be removed from office by the electors of the municipality. The procedure for effecting such a removal shall be as follows:—

Any elector of the municipality may make and file an affidavit with the clerk requesting that petitions be issued demanding an election for the recall of any member of the commission. Any such affidavit shall state the name of the person whose removal from the commission is sought and the grounds alleged for such removal. Upon the filing of such an affidavit, the clerk shall deliver to the elector making the affidavit copies of petition papers for demanding such an election, printed copies of which the clerk shall keep on file for distribution as herein provided. In issuing any such petition paper the clerk shall enter in a record to be kept in his office the name of the elector to whom issued, the date of issuance, the number of papers issued, and shall certify on each paper the name of the elector and the date of issuance. No petition paper shall be accepted as part of a petition unless it bear such certification of the clerk and unless filed as hereinafter provided.

En. Sec. 107, Ch. 160, L. 1923.

5520.228. Return and filing of petition. A petition for a recall election to be effective must be returned and filed with the clerk within thirty days after the filing of the affidavit as provided in the next preceding section, and to be sufficient must bear the signatures of electors equal in number to at least twenty per centum (20%) of those who voted at the last preceding regular municipal election. If any such petition be insufficient as originally filed it may be amended as provided in this act.

En. Sec. 108, Ch. 160, L. 1923.

5520.229. Submission of petition—Election. If a petition for a recall election, or an amended petition, shall be certified by the clerk to be sufficient he shall at once submit it to the commission with his certificate to that effect and shall notify the member of the commission whose removal is sought of such action. Unless the member whose removal is sought resign within five days after such notice, the commission shall thereupon order and fix a day for holding a recall election. Any such election shall be held not less than forty nor more than sixty days after the petition has been presented to the commission and may be held at the same time as any other election held within such period; but, if no other election be held within such period, the commission shall call a special recall election to be held within the time aforesaid.

En. Sec. 109, Ch. 160, L. 1923.

5520.230. Submission of two or more recalls. The question of recalling any number of members of the commission may be submitted at the same election, but as to each member whose removal is sought a separate petition shall be filed and provision shall be made for an entirely separate printed ballot. Candidates to succeed any person whose removal is sought shall be placed in nomination by petition signed, filed and verified as provided for nominating petitions for a municipal primary election; except that each petition paper shall specify that the candidate named therein is a candidate to succeed a particular person whose removal is sought.

En. Sec. 110, Ch. 160, L. 1923.

5520.231. Form of ballot—Prohibition use of voting machines. Voting machines shall not be used in recall elections, and the printed ballots shall be in form substantially as follows:—

RECALL ELECTION
CITY AND COUNTY OF BUTTE.
(Month and day of month, 19....)

SHALL (name of person) BE REMOVED
FROM THE COMMISSION BY RECALL.

FOR THE RECALL OF
(Name of Person)

AGAINST THE RECALL OF
(Name of Person)

CANDIDATES
To succeed (name of person) if recalled.
Vote for but one.

.....
.....
.....
.....

En. Sec. 111, Ch. 160, L. 1923.

5520.232. Effect of election. If a majority of the votes cast on the question of recalling a member of the commission as hereinbefore provided be against his recall he shall continue in office for the remainder of his unexpired term, but subject to recall as before. If a majority of such votes be for the recall of such member he shall, regardless of any defect in the recall petition, be deemed removed from office. When a member is removed from the commission by recall the candidate to succeed such member who receives the highest number of votes shall succeed the member so removed for the unexpired term.

En. Sec. 112, Ch. 160, L. 1923.

5520.233. Effect of resignation. If a person in regard to whom a recall petition is submitted to the commission shall resign from office after notice thereof no election shall be held and some eligible person shall be chosen by a majority vote of the remaining members to fill the place for the unexpired term; but the member so resigning shall not be chosen by the commission to succeed himself.

En. Sec. 113, Ch. 160, L. 1923.

5520.234. Limitation as to time of recall. No recall petition shall be filed in respect to any member of the commission within three months after he takes office nor, in case of a member subjected to a recall election and not removed thereby, until at least six months after that election.

En. Sec. 114, Ch. 160, L. 1923.

5520.235. Special perquisites forbidden. Any person elected or appointed to any office or position under the municipal government estab-

lished by this act shall be entitled to or receive for his own use any fees, emoluments, commissions or perquisites other than the salary or compensation fixed by this act or by the commission, and all such fees, emoluments, commissions and perquisites arising out of the performance of official duty shall belong to the municipality and be paid into the treasury thereof.

En. Sec. 115, Ch. 160, L. 1923.

5520.236. Political solicitation prohibited. No person holding an appointive office or position in the municipal government shall directly or indirectly solicit or receive, or be in any manner concerned in soliciting or receiving, any assessment, subscription or contribution for any political party or purpose whatever. No person shall orally or by letter solicit, or be in any manner concerned in soliciting, any assessment, subscription or contribution for any political party or purpose from any person holding an appointive office or position in the municipal government. No person shall use or promise to use his influence or official authority to secure any appointment, or prospective appointment, to any position in the service of the municipality as a reward or return for personal or partisan political service. No person shall take part in preparing any political assessment, subscription or contribution with the intent that it should be sent or presented to or collected from any person in the service of the municipality, nor shall he knowingly send or present directly or indirectly, in person or otherwise, any political assessment, subscription or contribution to, or request its payment by any person in such service.

En. Sec. 116, Ch. 160, L. 1923.

5520.237. Other restrictions on officers. No person in the service of the municipality shall discharge, suspend, lay off, reduce in grade, or in any manner change the official rank or compensation of any person in such service or threaten to do so, for withholding or neglecting to make any contribution of money or service or any valuable thing for any political purpose. No person holding an appointive office or place in the municipal government shall act as an officer in a political organization, or serve as a member of a committee of any such organization, or circulate or seek signatures for any petition provided for by primary or election laws.

En. Sec. 117, Ch. 160, L. 1923.

5520.238. Penalties. Any person who, by himself or in co-operation with one or more persons, wilfully or corruptly violates any of the provisions of section 116 and 117 of this act shall be guilty of a misdemeanor and shall, upon conviction thereof, be punished by a fine of not less than fifty dollars nor more than five hundred dollars or by imprisonment for a term not exceeding three months, or by both such fine and imprisonment, and if he be an officer or employee of the municipality he shall immediately forfeit his office or employment.

En. Sec. 118, Ch. 160, L. 1923.

5520.239. Restrictions on commissioners. No person elected to the commission shall, during the term for which elected, be appointed to any office or position in the service in the municipality. If a member of the commission shall become a candidate for any public office, other than that of commissioner, he shall immediately forfeit his place in the commission; and any appointive officer or employee of the municipality who shall become a candidate for nomination or election to any public office shall immediately forfeit the office or employment held under the municipality.

En. Sec. 119, Ch. 160, L. 1923.

5520.240. Board of equalization. The commission shall constitute the board of equalization for the city and county of Butte, and, except as otherwise provided in this act, shall have all other powers and perform all other duties prescribed for boards of county commissioners by the laws of this state.

En. Sec. 120, Ch. 160, L. 1923.

5520.241. Bonds required—Payment premiums. The members of the commission, the manager, the director of finance, the treasurer, the purchasing agent, the director of law, the director of police, and such other officers and employees of the municipality as the commission require so to do, shall, immediately upon taking office, give bonds with such surety as may be approved by the commission; but no officer or employee shall become surety upon the official bond of another officer or employee. Members of the commission shall give bonds in the sum of five thousand dollars and other officers and employees shall give bonds in such amounts as the commission may require. The premium on such official bonds may be paid by the municipality. All such bonds, except those of the manager and the director of finance, shall be filed with the director of finance. The official bonds of the manager and the director of finance shall be filed with and kept by the president of the commission.

En. Sec. 121, Ch. 160, L. 1923.

5520.242. Oath of office. Every officer of the municipality shall, before entering upon the duties of his office, take and subscribe to the oath or affirmation required of officers by section 430 of the Revised Code of Montana, 1921, which oath or affirmation shall be filed and kept in the office of the clerk.

En. Sec. 122, Ch. 160, L. 1923.

5520.243. Interest of officers in contracts forbidden. No officer or employee of the municipality shall have a financial interest direct or indirect, in any contract therewith, or be financially interested, directly or indirectly, in the sale to the municipality of any land, materials, supplies, or services except on behalf of the municipality as an officer or employee. Any wilful violation of this section shall constitute malfeasance in office, and any officer or employee found guilty thereof shall thereby forfeit his office or position. Any violation of this section with the knowledge, actual or implied, of the person or corporation contracting

with the municipality shall render the contract involved voidable by the manager or the commission.

En. Sec. 123, Ch. 160, L. 1923.

5520.244. Existing contracts continued. All contracts entered into by the county of Silver Bow or by any city or town therein, or on behalf of any improvement district by such county or by any such city or town, prior to the election and qualification of a commission under this act, shall continue in full force and effect subsequently thereto. Public improvements, for which initial steps may have been taken under laws effective in the county prior to the election and qualification of a commission under this act, may thereafter be carried to completion in accordance with the provisions of such laws.

En. Sec. 124, Ch. 160, L. 1923.

5520.245. Existing ordinances continued. All existing ordinances and resolutions of the city of Butte of general application therein and not inconsistent with the provisions of this act shall, upon the election and qualification of a commission under this act, be continued in force and their application extended throughout the city and county of Butte until amended or repealed by the commission. All other ordinances and resolutions of the city of Butte and of any city or town within the county, except ordinances and resolutions relating to public improvements to be paid for in whole or in part by special assessments, shall, upon the election and qualification of a commission under this act, be deemed repealed.

En. Sec. 125, Ch. 160, L. 1923.

5520.246. Duties of officers to commence and cease when. The members of the board of county commissioners of Silver Bow county, and the members of any city or town within the county, holding office on the fifteenth day of April next preceding the first election of a commission under the provisions of this act, shall continue in office and in the performance of their duties until such commission shall have been elected and have qualified, whereupon such board of county commissioners and all such city and town councils shall be deemed abolished. All other persons holding offices or positions, whether elective or appointive, under the government of such county, or under the government of any city or town therein, at the time of the adoption of this act, shall continue in the performance of the duties of their respective offices and positions, until such duties are assumed by officers duly appointed or elected and qualified under the provisions of this act. Provided, that nothing in this act contained shall be construed as in anywise affecting the election, tenure of office, powers, duties or compensation of the clerk of the district court, but the compensation of said clerk of the district court and his deputies shall be charges upon and be paid by said city and county of Butte.

En. Sec. 126, Ch. 160, L. 1923; Amd. Sec. 18, Ch. 44, L. 1925.

5520.247. General regulations for effecting transfer and collecting taxes on consolidation. Upon the adoption of this act by the voters of

the county, and the election and qualification of a commission thereunder, the separate corporate existence and government of Silver Bow county and of each and every city and town therein shall be deemed consolidated and merged into the municipality established by this act, which shall succeed to, possess and own all the property and assets and shall, save as herein otherwise provided, become responsible for all obligations and liabilities of the county, cities and towns as consolidated and merged. The city and county of Butte shall, immediately upon the adoption of this act by the electors thereof, succeed to, possess and own all the property of the county of Silver Bow, all the property of the city of Butte and all the property of the city of Walkerville, including choses in action; but as soon thereafter as may be possible the commission must, through the city and county attorney, petition the district court of said county to appoint three appraisers to fix the value of said property. Upon the filing of said petition the said court shall appoint three competent persons resident in the county, as appraisers to ascertain and determine the value of said property, and shall specify the time and place of the first meeting of such appraisers. The word "property" or "properties" as used herein shall not, for purposes of appraisement or compensation, include streets, alleys, roads, public parks, playgrounds, or sewers. The appraisers must before entering upon their duties, severally take and subscribe an oath before some person qualified to administer oaths, to faithfully, honestly and impartially discharge the duties of their appointment, and shall each receive the sum of \$10, payable out of the treasury of said municipality, for every day actually and necessarily employed in said appraisal. Within twenty days after their appointment and qualification, the said appraisers must file a verified report showing separately the value of all the property of the city of Butte, and the value of the property of the city of Walkerville, to which the city and county of Butte succeeded and became entitled, in virtue of the adoption of this act, except as hereinbefore set forth. Any taxpayer of the municipality may, within five (5) days after the report is filed, object to the same on the ground that the appraisement so made is too high or too low, or that property which should have been appraised is not included in the property appraised, or that property included in the property appraised did not belong either to the city of Butte or to the city of Walkerville or to the county of Silver Bow. The district court must, within fifteen (15) days after the report is filed, hear the testimony of witnesses concerning the correctness thereof, and following such hearing may, in its discretion, confirm or reject the same; if the court reject the report it shall, itself, from the facts in its possession, make an appraisal of all the property which belonged to the city of Butte, to the city of Walkerville, and the county of Silver Bow, up to the time of the adoption of this act, except as hereinbefore set forth, and render its judgment accordingly; and the action of the court in that behalf shall be deemed final, except in case of manifest error or abuse of discretion. When the report of the appraisers is confirmed by the court, or when the court itself shall have made the appraisement, the city and county of Butte shall be responsible for the payment of so much of the indebtedness of the present city of Butte as equals the appraised value of the property

owned by it at the adoption of this act, and shall be responsible for the payment of so much of the indebtedness of the city of Walkerville as equals the appraised value of the property owned by it at said time, and the indebtedness of the city of Butte and the indebtedness of the city of Walkerville shall be reduced to the extent of the appraised value of the property held and owned by them respectively at said time. Thereafter, and on the second Monday in August of each year, the commission shall levy upon the property in the district comprised within the present boundaries of the city of Butte, a tax, in addition to all other taxes, for the purpose of paying the interest on the then existing indebtedness of the city as it falls due, and the indebtedness itself as it matures, and no other property within the county shall be taxable or made liable for the payment of such indebtedness or the interest thereon; the proceeds of such tax levy shall be kept in a separate fund and shall be used only for the purpose for which the levy was made, except as hereinafter provided. And on the said second Monday in August of each year, the said commission shall levy upon the property within the district comprised within the boundaries of the city of Walkerville, a tax, in addition to all other taxes, for the purpose of paying the interest on the indebtedness of said city as it falls due, and the indebtedness itself as it matures, and no other property within the county shall be taxable or made liable for the payment of such indebtedness or the interest thereon; the proceeds of such tax levy shall be kept in a separate fund and shall be used only for the purpose for which the levy was made, except as hereinafter provided. The taxes levied under the provisions of this section shall be collected and paid in the manner, at the time and under the penalties prescribed by law for the collection and payment of state and county taxes.

En. Sec. 127, Ch. 160, L. 1923; Amd. Sec. 19, Ch. 44, L. 1925.

5520.248. Transition of government—Regulation of. The commission shall have power to make all necessary regulations, not inconsistent with this act, for the transition from the several governments of and within the county to the government provided by this act, including the transfer to the treasury of the city and county of Butte of all funds and moneys of such several governments.

En. Sec. 128, Ch. 160, L. 1923.

5520.249. Submission of act to electors. The question of the adoption of this act shall be submitted to the electors of the county if a petition, signed by at least fifteen hundred (1500) electors thereof requesting such submission, be filed with the county clerk. Any such petition shall be signed and filed, and shall be verified by the clerk, in the manner prescribed in this act for the signing, filing and verification of a referendum petition. If the county clerk find that any such petition, or amended petition, so filed, is signed by the required number of electors, he shall so certify to the board of county commissioners at their next meeting, and such board shall thereupon order and fix a day for holding such election which shall not be less than forty nor more than one hundred days after receipt of the clerk's certificate.

En. Sec. 129, Ch. 160, L. 1923; Amd. Sec. 20, Ch. 44, L. 1925.

5520.250. Form of ballot. Voting on the question of the adoption of this act by the electors of the county shall be by printed ballot only, and the ballots shall be in form substantially as follows:

SHALL CHAPTER 160 OF THE MONTANA SESSION LAWS OF 1923, AS AMENDED BY CHAPTER OF THE SESSION LAWS OF 1925, BEING AN ACT TO PROVIDE FOR THE CONSOLIDATION AND MERGER INTO ONE MUNICIPAL CORPORATION AND GOVERNMENT OF THE COUNTY OF SILVER BOW AND ALL CITIES AND TOWNS THEREIN, BE ADOPTED?

.....

YES.

.....

NO.

.....

En. Sec. 130, Ch. 160, L. 1923; Amd. Sec. 21, Ch. 44, L. 1925.

5520.251. Effect of election. If when submitted to the electors of the county, the adoption of this act be approved by a majority of those voting on the question it shall be deemed adopted and for the purpose of nominating and electing members of the commission this act shall be in effect from and after the election at which adopted, and in all other respects it shall be in effect immediately upon the election and qualification of a commission thereunder.

En. Sec. 131, Ch. 160, L. 1923.

5520.252. Effect of partial invalidity act—Proviso. The finding of the invalidity of any provision of this act shall not be deemed to invalidate the remaining provisions thereof. Provided, however, that when two or more city and county consolidation measures have been enacted into law applying to the same city, cities or towns, and counties they must be submitted to a vote of the qualified electors in the territory affected by them at one and same time and the plan securing a majority of the votes cast at such election will be declared adopted.

En. Sec. 132, Ch. 160, L. 1923.

PART V.

The Enactment, Revision, Publication and Effect of the Codes.

CHAPTER 1.

THE ENACTMENT AND EFFECT OF THE CODES.

5522. Construction of the codes with relation to each other.

Cited in State v. McGraw, 74 Mont. 152, 158, 240 Pac. 812.

5528. When codes go into effect.

Cited as section 3562, Revised Codes, in State v. District Court, 61 Mont. 558, 567, 202 Pac. 756.

CHAPTER 2A.

ADOPTION REVISED CODES OF 1921.

5546.1. Adoption Revised Codes of 1921. That the Revised Codes of Montana of 1921 as compiled, numbered and arranged by the code commissioner appointed by authority of chapter 195 of the Laws of the Sixteenth Legislative Assembly of 1919, and as certified to by said code commissioner are hereby, as to both form and substance, approved, legalized and adopted as the laws of Montana now in force and effect and the same are hereby declared to constitute all of the laws of Montana now in force and effect except such laws as were enacted by the Eighteenth Legislative Assembly of Montana, and such as may be adopted by the present session of said legislative assembly.

En. Sec. 1, Ch. 54, L. 1925.

Cited as chapter 54, L. 1925, in *State ex rel. Urton v. American Bank & Trust Co.*, 75 Mont. 369, 382, 243 Pac. 1093.

5546.2. Changes legalized. All changes made by said code commissioner in the language or arrangement of any law of the state embodied in said codes and all additions of new sections made by said commissioner to said code, are hereby legalized, approved and given validity.

En. Sec. 2, Ch. 54, L. 1925.

5546.3. Exception. Nothing herein contained shall be deemed as invalidating or in any manner affecting the legality of any act or thing heretofore or hereafter done by authority of any enactment, which is not included in said Revised Codes of Montana of 1921.

En. Sec. 3, Ch. 54, L. 1925.

PART VI.

Local and Special Laws.

CHAPTER 5.

EDUCATIONAL BONDS.

5606. Educational bonds authorized.

State educational bonds issued under sections 5606-5614 are valid and not affected retroactively by chapter 38, L. 1923, providing that public bonds shall be made payable on the amortization plan, if bonds in that form can be sold at a reasonable rate of interest. *State ex rel. Tatem v. Dixon et al.*, 70 Mont. 90, 223 Pac. 832; *State ex rel. Mills v. Dixon*, 68 Mont. 526, 219 Pac. 637.

The provisions of chapter 38, L. 1923, are not retroactive and are not therefore applicable to the series of bonds issued April 18, 1923, under the Educational Bond Act. *Educational Bonds Case*, 68 Mont. 526, 219 Pac. 637.

The constitutionality and regularity of enactment of Initiative Measure No. 19, now sections 5606-5614, were sustained in *State ex rel. Bonner v. Dixon et al.*, 59 Mont. 58, 195 Pac. 841. The case is annotated under appropriate sections of the constitution and code sections relating to initiative laws.

Sections 5606-5614 are self-executing, and an appropriation of the moneys placed in the fund created by them is not requisite as a condition precedent to their being paid out on proper warrant. *State ex rel. Bonner v. Dixon et al.*, 59 Mont. 58, 195 Pac. 841.

CHAPTER 6.

THREE MILLION DOLLARS TREASURY CERTIFICATES.

5615. Preamble—Authorization three million dollars treasury certificates.

The issuance and sale of treasury notes authorized by this and following sections, in anticipation of the payment of taxes levied, to procure funds with which to pay outstanding valid claims against and current expenses of the state, do not con-

stitute the incurring of a "debt or liability" within the meaning of section 2, article XIII, of the state constitution. State v. State Board of Examiners, 59 Mont. 557, 197 Pac. 988.

CHAPTER 6A.

TREASURY NOTES.

5623.1. Preamble. It appearing that there are now outstanding and unpaid valid warrants chargeable against the general fund of the state of Montana in an amount in excess of three million seven hundred fifty thousand dollars (\$3,750,000), bearing interest at the rate of six per cent per annum; and it appearing that said warrants can be refunded by the issuance of treasury notes at a much lower rate of interest and without creating any new indebtedness on the part of the state of Montana, and that there is not available for the payment of said outstanding warrants actual cash on hand in said general fund, and that in addition thereto the current expenses of the state and interest charges against said fund are constantly accruing, and that by the refunding of said warrants and the issuance of said treasury notes for a limited period of time, a saving in large amounts can be made to the state of Montana by reason of the reduced rate of interest which will be required to be paid upon said treasury notes; now, therefore,

Issuance treasury notes authorized. That for the purpose of redeeming and paying outstanding warrants against the general fund of the state of Montana, the state board of examiners is hereby authorized and empowered to issue and sell treasury notes for the use and benefit of and in the name of the state of Montana in the sum of three million seven hundred fifty thousand dollars (\$3,750,000), lawful money of the United States of America, the proceeds from the sale of which notes shall be deposited in the treasury of the state of Montana and credited to the general fund, and shall be used exclusively for the payment of warrants now outstanding and drawn upon the general fund of the state of Montana, and bearing interest at the rate of six per cent.

En. Sec. 1, Ch. 176, L. 1925.

Sections 5623.1-5623.8, authorizing the sale of state treasury notes to secure funds for the payment of outstanding warrants, attacked on constitutional grounds is valid. State ex rel. Toomey v. Board of Examiners, 74 Mont. 1, 238 Pac. 316.

NOTE.—The holdings of the court on the several points of constitutional law involved in the above case will be found under the annotations to the constitution.

The treasury notes authorized by sections 5623.1-5623.8 to take up outstanding state warrants, constitute evidences

of indebtedness, but stand in no different position as an obligation of the state than do the warrants themselves, and therefore do not change its obligation in any way. State ex rel. Toomey v. Board of Examiners, 74 Mont. 1, 238 Pac. 316.

Courts will not declare a statute void for uncertainty if it is possible to ascertain its meaning and give it an intelligible construction, and under that rule, sections 5623.1-5623.8 are not open to the objection that they are so inherently indefinite and uncertain that they cannot be enforced. State ex rel. Toomey v. Board of Examiners, 74 Mont. 1, 238 Pac. 316.

5623.2. Series and interest. Such treasury notes shall be issued in series and in such denomination as may be determined by the state board of examiners, shall bear date as of the day of the issuance thereof and shall become due and payable as follows:

Series A—\$1,000,000	January 15, 1926
Series B—\$1,250,000	July 15, 1926
Series C—\$1,500,000	January 15, 1927, and

shall bear interest at the rate of not to exceed four per cent per annum payable semi-annually.

En. Sec. 2, Ch. 176, L. 1925.

5623.3. Form and registry. The state board of examiners shall prescribe the form of such treasury notes, and each series shall bear upon its face the words: "Refunding Treasury Notes of the State of Montana," with a letter to designate the series thereof, and shall be signed by the members of the state board of examiners, and the great seal of the state of Montana shall be affixed to each note, and the notes shall be registered in the office of the state treasurer. Said treasury notes shall have interest coupons attached thereto, payable semi-annually on January 15 and July 15 of each year; provided, that the first interest coupon on each of said treasury notes shall be payable on July 15, 1925, and shall be for the interest from the date of the issuance of said treasury notes to said date. Said coupons shall be executed with the facsimile signatures of the members of the state board of examiners, and the signing of said coupons with said facsimile signatures shall be a sufficient execution of such interest coupons on behalf of the state of Montana.

En. Sec. 3, Ch. 176, L. 1925.

5623.4. Disposal of notes. The treasury notes provided for in this act shall be disposed of by the state board of examiners in such manner as they shall deem for the best interests of the state for the carrying out of the purposes and provisions of this act; provided, that no treasury note shall be disposed of for less than par value and accrued interest to date of sale.

En. Sec. 4, Ch. 176, L. 1925.

5623.5. Where and how payable. All of said treasury notes and interest coupons thereto attached shall be made payable to the bearer at the office of the state treasurer of the state of Montana at Helena, Montana, on maturity, and the notes of each series shall be entitled to payment in the order of their presentation, otherwise without preference or priority one over the other; provided, however, that the state board of examiners may provide that the said notes and interest coupons shall be payable at some bank or trust company in New York City to be selected by such state board of examiners.

En. Sec. 5, Ch. 176, L. 1925.

5623.6. Treasury note redemption fund. For the purpose of paying said treasury notes, as the same become due and of paying interest maturing thereon, there is hereby created in the treasury of the state

of Montana a special fund to be known as the "treasury note redemption fund," and so much of the moneys accruing to the general fund in the treasury of the state of Montana as will equal the amount of said treasury notes and interest coupons issued and outstanding, and due at any interest paying period are hereby apportioned to, set apart to, and shall be paid into and transferred to said treasury note redemption fund, and the said treasury note redemption fund and all moneys accruing, or to accrue therein are hereby appropriated exclusively to and for the payment of such treasury notes and the interest thereon; provided, that apportionments to said treasury note redemption fund shall be made semi-annually and only in such amounts and at such times as shall be necessary to meet each semi-annual charge.

En. Sec. 6, Ch. 175, L. 1925.

5623.7. Place of payment. The state treasurer of the state of Montana is hereby authorized, directed and empowered, upon the maturity of any of said treasury notes or interest coupons, to pay to the bearer thereof on presentation and surrender of the same at his office, or at the bank or trust company in the city of New York selected or designated by the state board of examiners, the amount thereof; all of which payments of treasury notes or interest coupons shall be made in the order of presentation, and all of which shall be paid from the treasury note redemption fund, and upon the surrender of any coupons or treasury notes, the treasurer shall cancel and mark the same paid.

En. Sec. 7, Ch. 175, L. 1925.

5623.8. Appropriation. That for the purpose of paying the expense of making said loan and the preparation and sale of said treasury notes and the registration of the same, and all legal and other incidental expenses in connection with said loan and the repayment thereof, there is hereby appropriated from any moneys of the general fund of the state of Montana, not otherwise appropriated, the sum of two thousand five hundred dollars (\$2,500), or so much thereof as may be necessary.

En. Sec. 8, Ch. 175, L. 1925.

CHAPTER 9.

PREFERENTIAL EMPLOYMENT SOLDIERS AND SAILORS—SOLDIER BONUS.

5653. Preference of soldiers and sailors in public employment. In every public department, and upon all public works of the state of Montana, and of any county and city thereof, honorably discharged Union soldiers and sailors and their widows of the Civil War, the Spanish-American War, the Philippine Insurrection, and of the late war with Germany and her allies, and any disabled civilian recommended by the state rehabilitation bureau, shall be preferred for appointment and employment; age, loss of limb or other physical impairment, which does not in fact incapacitate, shall not be deemed to disqualify them, provided they possess the business capacity, competency and education to discharge the duties of the position involved; provided, however, that none of the benefits of this act shall accrue to any person who refused to serve on active duty in the military service to which attached, or to take

up arms in the defense of the United States; provided, however, that no person, not a citizen of the United States, shall be employed by any state, city or county officer in any capacity if competent American labor is available; and, provided, further, that no person who has not been a resident of Montana for at least one (1) year immediately preceding an appointment shall be entitled to such preference; provided further, that for city or county employment no preference will be granted unless applicant under this act is also a resident of the city or town or county in which employment is sought.

Amd. Sec. 1, Ch. 133, L. 1927.

NOTE.—Referendum measure No. 25, being Chapter 162, Session Laws of 1921, which appears at pages 615 et seq. Session Laws of 1923, the so-called Soldier Bonus Law, is omitted from this Supplement, having been held unconstitutional in the case of *State ex rel. Mills v. Dixon et al.*, 66 Mont. 76, 213 Pac. 227.

THE CIVIL CODE.

PART I.

The Definition and Sources of the Law.

CHAPTER 1.

LAW—THE CONSTITUTION, STATUTES AND COMMON LAWS.

5672. Common law, when rule of decision.

The common law of England declared by this section to be the rule of decision in Montana so far as it is not repugnant to the federal or state constitution or the state laws, is that body of jurisprudence as applied and modified by the courts of this country up to the time it was made a rule of decision by the first Montana territorial legislature. *Herrin v. Sutherland*, 74 Mont. 587, 42 A. L. R. 937, 241 Pac. 328.

Cited in *Anderson et al. v. Wirkman*, 67 Mont. 176, 182, 215 Pac. 224; *Simonsen v. Barth et al.*, 64 Mont. 95, 100, 208 Pac. 938; *Gas Products Co. v. Rankin*, 63 Mont. 372, 389, 24 A. L. R. 294, 207 Pac. 993; as section 3552, Revised Codes, in *LeMunyon v. Gallatin Valley Ry. Co.*, 60 Mont. 517, 523, 199 Pac. 915.

For text treatment of this subject see vol. 5 Cal. Jur. 255.

PART II.

Persons and Personal Relations.

CHAPTER 1.

PERSONS—MINORS, ADULTS AND PERSONS OF UNSOUND MIND.

5673. Minors and adults defined.

The controlling element in juvenile laws is age, not minority; hence the contention that a female cannot be held under a commitment in the State Vocational School for Girls after she reaches the

age of majority fixed by this section at eighteen years, cannot be sustained. *State ex rel. Foot v. District Court*, 77 Mont. 290, 49 A. L. R. 398, 250 Pac. 973.

5680. When minors may disaffirm.

Where from the very nature or character of a consideration received by a minor for the execution of a contract (services performed by attorneys under a contract of employment to institute an action) it cannot be returned by him as required by this section as a condition precedent to disaffirmance, he may disaffirm though unable to make return.

Downey et al. v. Northern Pacific Ry Co., 72 Mont. 166, 232 Pac. 531.

For text treatment of this subject see vol. 14 Cal. Jur. 124.

Return of property purchased by infant as condition of recovery of purchase money paid, note, 16 A. L. R. 1475; 36 A. L. R. 782.

5681. Minor or person of unsound mind cannot disaffirm contract for necessities.

A party desiring to rely upon the exception to the rule that a minor may disaffirm a contract provided for by this section, to the effect that he cannot dis-

affirm a contract to pay the reasonable value of things necessary for his support, must plead that the things furnished were necessities in his complaint or re-

ply. *Downey et al. v. Northern Pacific Ry. Co.*, 72 Mont. 166, 232 Pac. 531.

Quaere: Is the employment of an attorney by a minor to prosecute an action for false imprisonment a "necessary"

within the meaning of this section a contract for which he cannot disaffirm upon obtaining majority? *Downey et al. v. Northern Pacific Ry. Co.*, 72 Mont. 166, 232 Pac. 531.

5683. Contracts of persons without understanding.

A contract made with a person entirely without understanding is void ab initio, while one made with a person of unsound mind "but not entirely without understanding," is voidable only at the suit of one seeking to rescind on one of the grounds mentioned in the chapter of the codes relating to rescission. *Fleming v. Consolidated M. S. Co.*, 74 Mont. 245, 240 Pac. 376.

In an action by an incompetent by his guardian ad litem for the cancellation of a contract of sale of an automobile, complaint alleging, in substance, that plaintiff, at the time of the transaction, was entirely without understanding and without mental capacity to understand business transactions of the nature of that involved, and specifically charging that he did not understand, and was without mental capacity to understand, the transaction in question, stated a cause of action under this section. *Fleming v. Consolidated M. S. Co.*, 74 Mont. 245, 240 Pac. 376.

Evidence held insufficient to sustain a finding that plaintiff, an alleged incompetent, was entirely without understanding at the time he executed a contract sought to be canceled under the provision of this section. *Fleming v. Consolidated M. S. Co.*, 74 Mont. 245, 240 Pac. 376.

Where a contract is sought to be canceled on the ground of incompetency un-

der this section on the ground that the incompetent was "entirely without understanding" at the time he made it, the proof need not show an entire lack of understanding on any subject, i. e., that his mind was an absolute void, it being sufficient to show such a degree of mental deficiency as to render him incapable of understanding a transaction of the nature involved in the action. *Fleming v. Consolidated M. S. Co.*, 74 Mont. 245, 240 Pac. 376.

Testimony of lay witnesses that plaintiff was of unsound mind is not sufficient to establish that he was "entirely without understanding" within the meaning of this section, making such a contract absolutely void. *Fleming v. Consolidated M. S. Co.*, 74 Mont. 245, 240 Pac. 376.

Plaintiff having based her action on the ground that at the time the deceased grantor executed the deed sought to be set aside she did not have capacity to make a contract under this section and not on the ground that she was entitled to rescind under section 5684, an allegation that she had restored or offered to restore everything of value deceased had received from defendant was not required. *Kiley v. Dahaney*, 61 Mont. 608, 202 Pac. 1110.

For text treatment of this subject see vol. 6 Cal. Jur. 32.

5684. Contracts of other persons of unsound mind.

Cited as section 3596, Revised Codes, in *Kiley v. Dahaney*, 61 Mont. 608, 613, 202 Pac. 1110.

5685. Power of persons whose incapacity has been adjudged—Effect certificate discharge from asylum. After his incapacity has been judicially determined, a person of unsound mind can make no conveyance or other contract, except where such contract confers a beneficial interest to his estate, nor delegate any power, nor waive any right, until his restoration to capacity; but a certificate from the medical superintendent or resident physician or other officer of the insane asylum to which such person may have been committed, whether said insane asylum is in this state or elsewhere, showing that such person has been discharged, released or paroled therefrom, cured and restored to reason, or discharged, released, or paroled in an improved condition shall establish the presumption of legal capacity in such person from the time of such discharge, release or parole.

Amd. Sec. 1, Ch. 8, L. 1925.

Admissibility and probative force of adjudication of insanity on question of

lunatic's power to execute contract, note, 7 A. L. R. 579, 598.

For text treatment of this subject see vol. 14 Cal. Jur. 338.

CHAPTER 2.

PERSONAL RIGHTS—LIBEL AND SLANDER—PROTECTION TO PERSONAL RELATIONS.

5690. Libel defined.

Language of a newspaper article examined and held not libelous per se in *Rowan v. Gazette Printing Co.*, 74 Mont. 326, 239 Pac. 1035.

Language of a newspaper article charging wrongdoing on the part of a road supervisor examined and held libelous per se in *Manley v. Harer et al.*, 73 Mont. 253, 235 Pac. 757.

A newspaper article headed "The White-livered Shyster," which in its body imputed grossly criminal conduct to an attorney, and charged him with "creating sham issues," "preaching violation of the law and defiance of the Constitution he had sworn to defend," "inciting anarchy," etc., was libelous per se. *Nolan v. Standard Publishing Co. et al.*, 67 Mont. 212, 216 Pac. 571.

Cited in *Manley v. Harer et al.*, 73 Mont. 253, 258, 235 Pac. 757.

Abusive words imputing criminal conduct, note, 37 A. L. R. 887.

Charge or implication of insolvency of bank, note, 37 A. L. R. 1348.

Charging one with being a "slacker," note, 11 A. L. R. 1017.

Charging one with failure to keep contracts, note, 5 A. L. R. 1362.

Charging merchant with using false

weights or measures, note, 13 A. L. R. 1019.

Charging woman with adultery, note, 11 A. L. R. 674.

Charging woman with being a whore or prostitute, note, 11 A. L. R. 669.

Charging woman with keeping bawdy-house, note, 11 A. L. R. 672.

Imputing disposition to avoid war service, note, 49 A. L. R. 260.

Imputation of belief in anarchy, note, 51 A. L. R. 1071.

Imputation of venereal disease, note, 45 A. L. R. 1115.

Imputation that property sold or offered for sale is subject to encumbrance, note, 50 A. L. R. 279.

False imputation of matrimonial intentions, note, 44 A. L. R. 1424.

Listing nontrader as unworthy of credit, note, 3 A. L. R. 1590.

Placarding debtor, note, 3 A. L. R. 1596.

Reporting person as a delinquent debtor, note, 48 A. L. R. 573.

Statements respecting race, color or nationality, note, 50 A. L. R. 1413.

For text treatment of this subject see vol. 16 Cal. Jur. 25.

5692. What communications are privileged.

A communication addressed by taxpayers to the board of county commissioners asking for the removal of a road supervisor and containing a libelous statement was not privileged under this section, subdivision 3, where made with malice. *Manley v. Harer et al.*, 73 Mont. 253, 235 Pac. 757.

May actual malice which will defeat conditional privilege coexist with belief in truth of imputation, note, 18 A. L. R. 1160.

Question for court or jury as to excess of privilege, note, 26 A. L. R. 843.

Statement or testimony in lunacy proceedings as privileged, note, 2 A. L. R. 1582.

Privilege of statements made during trial by one not on witness-stand or acting as attorney for another, note, 44 A. L. R. 389.

Findings or the like of judge or person acting in judicial capacity as privileged, note, 20 A. L. R. 407.

Testimony of witness as basis of civil action, note, 12 A. L. R. 1247.

Relevancy of matter contained in plead-

ing as affecting privilege, notes, 16 A. L. R. 746; 42 A. L. R. 878.

Listing nontrader as unworthy of credit as privileged, note, 3 A. L. R. 1592.

Privilege in application for pardon, note, 2 A. L. R. 1376.

Communications between different offices of corporation, note, 5 A. L. R. 455.

Privilege of communication in relation to member or prospective member of society, other than church, notes, 3 A. L. R. 1654; 15 A. L. R. 453.

Privilege of statement or communication by official charged with prosecution or detection of crime, note, 15 A. L. R. 249.

Privilege in reports or statements about pupils, note, 12 A. L. R. 147.

Communication or exhibition of defamatory matter to employee of defendant as privileged, note, 18 A. L. R. 776.

Communications by employer to surety company, note, 11 A. L. R. 1014.

Liability of member of credit association for reporting one as a delinquent debtor, note, 48 A. L. R. 573.

For text treatment of this subject see vol. 16 Cal. Jur. 63.

CHAPTER 3.

PERSONAL RELATIONS—MARRIAGE, HOW CONTRACTED AND AUTHENTICATED.

5695. What constitutes marriage.

Since there is no common law in Montana where the law is declared by the codes or the statutes, and under this section, consent of the parties to marry is not alone sufficient to bring about the relation but in the absence of a solemnization there must be a public assumption of the relation, there is no common-law marriage in this state where such public

assumption was absent. *State v. Newman*, 66 Mont. 180, 213 Pac. 805.

Validity of common-law marriage in American jurisdictions, note, 39 A. L. R. 538.

Habit and repute as essential to common-law marriage, note, 33 A. L. R. 27.

For text treatment of this subject see vol. 16 Cal. Jur. 914.

5697. Marriage—How manifested and proved.

Cited in *State v. Newman*, 66 Mont. 180, 195, 213 Pac. 805.

5724. Declaration of marriage—How made.

The purpose of a declaration of marriage provided for by this section and section 5725, is to authenticate, and does not itself constitute, a marriage, and therefore such an instrument executed by defendant charged with rape and the prosecuting witness and filed on the day before the commencement of the trial

and stating that the parties had married on the day on which the alleged crime was committed, was not sufficient to show marriage. *State v. Newman*, 66 Mont. 180, 213 Pac. 805.

For text treatment of this subject see vol. 16 Cal. Jur. 916.

5725. Contents of declaration.

Applied with section 5724 in *State v. Newman*, 66 Mont. 180, 213 Pac. 805.

CHAPTER 5.

DISSOLUTION OF MARRIAGE—DIVORCE.

5734. Marriage—How dissolved.

By the enactment of sections 5734-5781, and sections 5800 and 5801, and others in pari materia with them, the subjects of divorce, separate maintenance, as well as the rights, duties and obligations of husband and wife were intended to be fully covered, and hence all rules there-

before in force are thereby supplanted. *Grimstad et al. v. Johnson et al.*, 61 Mont. 18, 25 A. L. R. 351, 201 Pac. 314.

For text treatment of this subject see vol. 16 Cal. Jur. 906.

5736. Causes for divorce.

Cited in *State ex rel. La Point v. District Court*, 69 Mont. 29, 31, 220 Pac. 88.

Cited in *Giebler v. Giebler*, 69 Mont. 347, 350, 222 Pac. 436; as section 3643, Revised Codes, in *Grimstad et al. v. Johnson et al.*, 61 Mont. 18, 24, 25 A. L. R. 351, 201 Pac. 314.

Constitutionality of discrimination as between husband and wife as to grounds of divorce, note, 17 A. L. R. 793.

For text treatment of this subject see vol. 9 Cal. Jur. 640.

5738. Extreme cruelty defined.

Cited in *Giebler v. Giebler*, 69 Mont. 347, 350, 222 Pac. 436.

Abuse by relatives of other spouse as

cruelty constituting ground for divorce, note, 3 A. L. R. 993.

Charge of insanity or attempt to have spouse committed to an insane asylum as

ground for divorce, note, 18 A. L. R. 572.

Charges of marital misconduct in divorce suit as cruelty, note, 51 A. L. R. 1188.

Communication of venereal disease as cruelty, notes, 5 A. L. R. 1016; 8 A. L. R. 1540.

Conduct amounting to danger to life within statute defining grounds for divorce, note, 5 A. L. R. 712.

Forcing spouse to get rid of child by former marriage as cruelty, note, 3 A. L. R. 803.

Religious differences, notes, 28 A. L. R. 1163; 44 A. L. R. 726.

Single act as basis of divorce or separation on ground of cruelty, note, 24 A. L. R. 918.

For text treatment of this subject see vol. 9 Cal. Jur. 645.

5743. Consent to separation revocable.

Under this section, consent to a separation between husband and wife is a revocable act, and where thereafter one of the parties in good faith seeks a reconciliation, and restoration, refusal by

the other is desertion. *Giebler v. Giebler*, 69 Mont. 347, 222 Pac. 436.

For text treatment of this subject see vol. 9 Cal. Jur. 670.

5745. Husband may select home.

Where husband and wife were living apart under a separation agreement, an offer of reconciliation made by the husband was not open to the charge that it was not made in good faith in the absence of a showing that at the time it was made he had secured and furnished a home for himself and wife, the statute not imposing such burden, and this sec-

tion, providing that it is the privilege of the husband to choose any reasonable place of abode or mode of living, and if the wife does not conform thereto it is desertion. *Giebler v. Giebler*, 69 Mont. 347, 222 Pac. 436.

For text treatment of this subject see vol. 9 Cal. Jur. 676.

5747. Wilful neglect, what constitutes.

State ex rel. *La Point v. District Court*, 69 Mont. 29, 31, 220 Pac. 88.

For text treatment of this subject see vol. 9 Cal. Jur. 680.

5766. Period of residence required to entitle plaintiff to divorce.

In a divorce action the allegation in the complaint that plaintiff was at the time of its commencement, and had been for at least one year prior thereto, a resident of the state, is indispensable, as is also proof satisfactory to the court of that fact. *Clark v. Clark*, 64 Mont. 386, 210 Pac. 93.

Where in a divorce action the complaint contained the necessary allegation of plaintiff's residence within the state and the court had regularly obtained jurisdiction of the subject matter and the parties, and defendant made no appearance but allowed decree by default to be entered against her, she was in no position to attack the decree for fraud on the ground that the allegation in the

complaint that plaintiff had been a resident of the state for the time required by this section was false, such fraud not having been extrinsic or collateral to the matter tried by the court as above defined. *Clark v. Clark*, 64 Mont. 386, 210 Pac. 93.

Separate domicile of wife for purposes of jurisdiction over suit by her for divorce or separation, note, 39 A. L. R. 710.

Jurisdiction of state court over divorce suit by resident of United States reservation, note, 46 A. L. R. 993.

For text treatment of this subject see vol. 9 Cal. Jur. 695.

5767. Divorce not granted by default alone, etc.

Cited in *Clark v. Clark*, 64 Mont. 386, 393, 210 Pac. 93.

5768. Relief may be adjudged, when divorce is denied.

Cited in State ex rel. *La Point v. District Court*, 69 Mont. 29, 36, 220 Pac. 88.

5769. Expenses of action—Alimony.

The district court in the exercise of its equity jurisdiction may grant a wife a decree for separate maintenance, together with alimony, suit money and attorney's fees pending suit, asked for on the ground of wilful neglect, independently of an action for divorce, and it is not divested of such jurisdiction under the maxim "expressio unius est exclusio alterius" by the provision of this section, that in case of wilful desertion the wife may, without applying for a divorce, maintain such an action. *State ex rel. La Point v. District Court*, 69 Mont. 29, 220 Pac. 88.

An action against the husband for legal services rendered the wife in instituting divorce proceedings, which were dismissed by her soon after their commencement, did not lie under this section, which provides that while a divorce action is pending the court or judge may require the husband to pay suit money to enable the wife to prosecute (or defend) the action, the power thus conferred being exclusive and ancillary to, and not independent of, the divorce action. *Grimstad et al. v. Johnson et al.*, 61 Mont. 18, 25 A. L. R. 351, 201 Pac. 314.

Plaintiff, in an action for divorce on the ground of extreme cruelty, had no property in her own right or means of support and was in ill health; the estate of defendant amounted to approximately \$20,000 over and above his just debts and liabilities; the court awarded plaintiff \$50 per month permanent alimony. Held, in view of the provision of this section, vesting in the district court absolute discretion as to the alimony to be paid by the husband, and the fact that the trial court had jurisdiction to modify its order relating to alimony at any time when considered necessary or desirable, that the decree in this respect was not open to reversal in the absence of a showing of abuse of discretion. *Boles v. Boles*, 60 Mont. 411, 199 Pac. 912.

Cited in *Coleman v. Sisson*, 71 Mont. 435, 445, 230 Pac. 582; *Davenport v. Davenport*, 69 Mont. 405, 409, 222 Pac. 422; as section 3677, Revised Codes, in *Cummins v. Cummins*, 59 Mont. 225, 229, 195 Pac. 1031.

"Final division and distribution" of estate, within statute allowing such in lieu of alimony, note, 1 A. L. R. 1106.

Fault of party as affecting right to alimony under statute making separation a substantive ground of divorce, note, 51 A. L. R. 767.

Defenses available to husband in civil suit by wife for support, note, 6 A. L. R. 6.

Misconduct of wife as defense to civil suit for support, note, 6 A. L. R. 22.

Divorce upon constructive service as affecting power to allow alimony upon subsequently obtaining personal jurisdiction over former husband, note, 42 A. L. R. 1385.

Wife's possession of independent means as affecting her right to temporary alimony, note, 15 A. L. R. 781.

Right of husband to maintenance, suit money or attorneys' fees in suit for divorce, note, 24 A. L. R. 491.

Right of counsel fees upon application for change of alimony after divorce, note, 24 A. L. R. 491.

Financial condition of parties as affecting allowance of suit money, note, 35 A. L. R. 1099.

Allowance of counsel fees to wife to prosecute or defend appeal in matrimonial action, note, 18 A. L. R. 1494.

Reconciliation of parties to divorce suit as affecting allowance of counsel fees previously made, note, 3 A. L. R. 1109.

Continuance of divorce suit by attorney to secure allowance of suit money against wishes of client, note, 45 A. L. R. 941.

Earning capacity of husband as basis for determining alimony pendente lite, note, 6 A. L. R. 192.

Financial condition of parties as affecting amount, note, 35 A. L. R. 1103.

Reconciliation as affecting decree for alimony or support money, note, 40 A. L. R. 1239.

Validity of conveyance by wife of property awarded to her as support for herself and child, note, 8 A. L. R. 651.

Earning capacity or prospective earnings of husband as basis of alimony, note, 6 A. L. R. 192.

Reconciliation as affecting decree for alimony, note, 40 A. L. R. 1239.

Alimony as affected by remarriage, notes, 30 A. L. R. 79; 37 A. L. R. 441; 42 A. L. R. 602.

Death of husband as affecting alimony, note, 18 A. L. R. 1040.

Right to impose fine for failure to pay alimony, note, 14 A. L. R. 717.

Power to issue writ of ne exeat to prevent decree for alimony from becoming ineffective, note, 8 A. L. R. 327.

Enforcement of claim for alimony against exemptions, note, 11 A. L. R. 123.

Liability of spendthrift trust for alimony or support money, note, 35 A. L. R. 1035.

Inability to comply with judgment or order for payment of alimony as defense to charge of contempt, notes, 22

A. L. R. 1260; 31 A. L. R. 650; 40 A. L. R. 546.

Present inability to pay as defense to contempt proceedings to enforce payment of past installments of alimony, non-payment of which was inexcusable, note, 9 A. L. R. 265.

Statute expressly or impliedly denying power to enforce by process of contempt, order, judgment, or decree, for money as applicable to order or decree for alimony, note, 8 A. L. R. 1156.

For text treatment of this subject see vol. 1 Cal. Jur. 943.

5770. Orders respecting custody of children.

While a decree fixing the custody of minor children in a divorce proceeding is final upon the conditions then existing, the court may modify it upon a showing that the then conditions have changed, the welfare of the children being the paramount consideration. *Jewett v. Jewett*, 73 Mont. 591, 237 Pac. 702.

This and the following section were cited as sections 3678, 3679, Revised Codes, in *Boles v. Boles*, 60 Mont. 411, 413, 199 Pac. 912.

Attempt to bastardize child as affecting right to custody of the child, notes, 4 A. L. R. 1119; 37 A. L. R. 531.

Allowance in decree against parent for education of child, note, 18 A. L. R. 899; 47 A. L. R. 118.

Jurisdiction of court granting divorce to control custody of child as affected by assumption of jurisdiction by juvenile court, note, 11 A. L. R. 147.

Wife's possession of independent means as affecting her right to allowance for support of her children, note, 15 A. L. R. 781.

For text treatment of this subject see vol. 9 Cal. Jur. 786.

5771. Support of wife and children on divorce or separation granted to wife.

In awarding alimony in a final decree of divorce, the amount which the wife should receive is not measured by the value of any certain portion of the husband's estate, but is to be determined by the equities of the case, having due regard for the financial condition and necessities of the parties. *Wandel v. Wandel*, 76 Mont. 160, 248 Pac. 864.

Under this section, and in the absence of legislation permitting it, the district court is without authority to compel the husband to whom a divorce has been

properly granted for offense of the wife to make provision for her support, but that such support can only be awarded where divorce is granted the wife for the husband's offense. *Bischoff v. Bischoff*, 70 Mont. 503, 226 Pac. 508.

Cited in *Coleman v. Sisson*, 71 Mont. 435, 445, 230 Pac. 582; *Bast v. Bast et al.*, 68 Mont. 69, 77, 217 Pac. 345; as section 3679, Revised Codes, in *Cummins v. Cummins*, 59 Mont. 225, 229, 195 Pac. 1031.

5772. Security for maintenance and alimony.

Cited in *Coleman v. Sisson*, 71 Mont. 435, 445, 230 Pac. 582; *Bast v. Bast et al.*, 68 Mont. 69, 77, 217 Pac. 345.

CHAPTER 6.

HUSBAND AND WIFE.

5783. Rights of husband as head of family.

Cited in *Gates v. Powell*, 77 Mont. 554, 562, 252 Pac. 377.

5784. Duties of husband to wife as to support.

Cited in *Giebler v. Giebler*, 69 Mont. 347, 352, 222 Pac. 436; *State ex rel. La Point v. District Court*, 69 Mont. 29, 37, 220 Pac. 88.

5786. Husband and wife may make contracts.

While a husband who borrows money from his wife with the understanding that it shall be repaid will be treated as her debtor, the unexplained payment of money by a wife to her husband does

not raise a presumption that a loan was intended and she cannot enforce payment, the law on the contrary presuming that the advance was a gift not thereafter

recoverable by her. *Bast v. Bast et al.*, 68 Mont. 69, 217 Pac. 345.

Under this section and sections 5792 and 7895, the law presumes that the delivery by a married woman to her husband of two cashier's checks owned

by her, which he cashed, were trusts or loans. *Gilmore v. Gilmore*, 270 Fed. 260.

Cited in *Harrison v. Riddell et al.*, 64 Mont. 466, 479, 210 Pac. 460.

For text treatment of this subject see vol. 6 Cal. Jur. 36.

5787. Extent to which their legal relation may be altered by contract—Separation agreement.

An agreement by husband and wife for immediate separation, making provision for the support of either and of their children, authorized by this section if fairly made and executed and free from fraud or imposition, coercion or duress, will be enforced, and is not ordinarily a bar to an action for divorce for cause then existing or arising subsequently thereto, in the absence of a covenant, express or implied, not to sue for past offenses. *Sherman v. Sherman*, 65 Mont. 227, 211 Pac. 321.

An agreement between husband and wife authorized by this section is void

if entered into with the intent of bringing about or facilitating a divorce. *Sherman v. Sherman*, 65 Mont. 227, 211 Pac. 321.

An agreement between husband and wife providing for a property settlement between them must, under this section, be in writing. *Clary v. Fleming*, 60 Mont. 246, 198 Pac. 546.

Cited in *Viers v. Webb*, 76 Mont. 38, 41, 245 Pac. 257.

For text treatment of this subject see vol. 9 Cal. Jur. 821.

5792. Separate property of wife.

Applied with sections 5786 and 7895 in *Gilmore v. Gilmore*, 270 Fed. 260.

5793. Inventory of separate property of wife.

Evidence in an action for the conversion of restaurant fixtures claimed by the wife of a judgment debtor as her separate property and seized by the attaching creditor with constructive notice of plaintiff's claim by reason of an inventory filed by her under this section, over plaintiff's protests and objections, thus destroying a prosperous business in an

effort to coerce her to pay her husband's debt, held sufficient to warrant an award of exemplary damages. *Wray v. Great Falls Paper Co.*, 72 Mont. 461, 234 Pac. 486.

For text treatment of this subject see vol. 13 Cal. Jur. 818.

5794. Effect of filing inventory.

Cited in *Wray v. Great Falls Paper Co.*, 72 Mont. 461, 468, 234 Pac. 486.

5797. Work and labor of wife.

The common-law rule that the wife owes the duty to the husband to attend to all ordinary household duties and labor in the advancement of the husband's interests without compensation was not changed, but is recognized, by this section in providing that all work and labor performed by a married woman for a person other than her husband and chil-

dren is presumed to be performed for her own account. *Gates v. Powell*, 77 Mont. 554, 252 Pac. 377.

Right of wife not living with husband to her own earnings, note, 10 A. L. R. 778.

For text treatment of this subject see vol. 13 Cal. Jur. 803.

5799. Separate property of wife—How far liable.

Cited in *Wray v. Great Falls Paper Co.*, 72 Mont. 461, 468, 234 Pac. 486.

5800. Support of wife.

An action to recover for legal services in instituting divorce proceedings is not maintainable under this section, impliedly

conferring authority upon the wife to charge her husband, as his agent, for the value of articles necessary for her

support, a want of funds with which to prosecute a suit for a divorce not being a "necessary" as that term is employed in that section. *Grimstad et al. v. Johnson et al.*, 61 Mont. 18, 25 A. L. R. 351, 201 Pac. 314.

Cited in *State ex rel. La Point v. District Court*, 69 Mont. 29, 37, 220 Pac. 88.

Husband's liability for funeral expenses of wife, note, 31 A. L. R. 1499.

Clandestine marriage as affecting right to recover from husband for support furnished to wife, note, 30 A. L. R. 802.

Liability of husband for necessities as affected by question whether or not they were purchased on his credit, note, 27 A. L. R. 554.

Notice to salesman that purchase is on wife's credit as imputable to principal, note, 43 A. L. R. 752.

Husband's liability for necessities furnished wife where credit was given to a third person, note, 27 A. L. R. 575.

Question whether goods were purchased on husband's credit as affected by fact that parties were separated, note, 27 A. L. R. 573.

Duty of husband to provide necessities for wife as affected by her possession of independent means, note, 18 A. L. R. 1131.

Question whether goods were purchased on husband's credit as affected by wife's possession of separate means, note, 27 A. L. R. 564.

Furniture and household goods as necessities for which husband is liable, note, 24 A. L. R. 1483.

Liability of husband in independent action for services rendered by attorney to wife in divorce suit, notes, 25 A. L. R. 354; 42 A. L. R. 315.

Husband's liability for legal services in attempting to restore wife's capacity after adjudication of insanity, note, 26 A. L. R. 559.

Liability of husband for services of detective employed by wife to shadow him, note, 41 A. L. R. 1437.

Liability of husband for independent tort of wife, notes, 20 A. L. R. 528; 27 A. L. R. 1218.

For text treatment of this subject see vol. 13 Cal. Jur. 804.

5803. Rights of husband and wife—How governed.

Cited in *Gates v. Powell*, 77 Mont. 554, 562, 252 Pac. 377.

CHAPTER 7.

DOWER.

5813. Dower.

In view of the code provisions relative to the right of dower depending upon eventualities which cannot be foreseen, it is impossible to place a valuation upon a widow's right in advance of her husband's death, and therefore plaintiff in an action for specific performance of a land contract to which the vendor's wife was not a party, requiring defendant to convey all his right, title and interest in the premises for the agreed price less the determined value of his wife's dower right, cannot claim abatement from the contract price. *Rosenow v. Miller et al.*, 63 Mont. 451, 207 Pac. 618.

Cited in *Mathews v. Marsden et al.*, 71 Mont. 502, 507, 230 Pac. 775; In re

McLure's Estate, 63 Mont. 536, 539, 208 Pac. 900.

Constitutionality of statutes in relation to dower, note, 20 A. L. R. 1330.

Rights of one having inchoate right of dower in property condemned, note, 5 A. L. R. 1347.

Dower rights in partnership real estate of widow of deceased partner, note, 25 A. L. R. 411.

Dower in land subject to leasehold estate, note, 21 A. L. R. 1079.

Permanent leaseholds, note, 39 A. L. R. 340.

Dower in reversion or remainder interest of husband, note, 21 A. L. R. 1073.

5818. Absent wife need not sign deed.

In an action to compel a vendor to convey all his title and interest in property at a price stipulated in a contract to which his wife was not a party, less the determined value of latter's dower right, a complaint was defective which did not allege that plaintiff contracted in

ignorance of the fact that defendant was a married man, or that his wife was or ever had been in the state, since, under this section, if she was never in the state she had no dower interest in the property. *Rosenow v. Miller et al.*, 63 Mont. 451, 207 Pac. 618.

5819. Widow may elect.

Cited in *Mathews v. Marsden et al.*, 71 Mont. 502, 508, 230 Pac. 775; This and section 5820 were cited in *In re Mc-*

Lure's Estate, 63 Mont. 536, 540, 208 Pac. 900; Cited in *Rosenow v. Miller et al.*, 63 Mont. 451, 459, 207 Pac. 618.

5821. Rights of widow when no issue.

The remarriage of a widow did not deprive her of the right to elect to take a one-half interest in the estate of her deceased husband, under this section, in lieu of dower granted by section 5813, the word "widow" as used in those sections referring to the person and not to her then state or condition. *Mathews v. Marsden et al.*, 71 Mont. 502, 230 Pac. 775.

Administrator's fees, attorney's fees and taxes on the estate for the current

year remaining unpaid are not "just debts and claims against the deceased husband," within the meaning of this section, which must be paid before the widow is entitled to have one-half of the real property of which the husband died seized, set aside to her in lieu of dower. *Mathews v. Marsden et al.*, 71 Mont. 502, 230 Pac. 775.

Cited in *Rosenow v. Miller et al.*, 63 Mont. 451, 459, 207 Pac. 618.

5824. Antenuptial settlement—When a bar to dower.

Cited in *Mathews v. Marsden et al.*, 71 Mont. 502, 509, 230 Pac. 775.

5825. Assent to marriage settlement.

Cited in *Mathews v. Marsden et al.*, 71 Mont. 502, 509, 230 Pac. 775.

CHAPTER 8.

PARENT AND CHILD—CHILDREN BY BIRTH AND BY ADOPTION.

5830. Legitimacy of children born in wedlock.

Cited in *In re Thompson*, 77 Mont. 466, 474, 251 Pac. 163.

5832. Who may dispute the legitimacy of a child.

Cited in *In re Thompson*, 77 Mont. 466, 474, 251 Pac. 163.

Who may question legitimacy of child born in wedlock, note, 1 A. L. R. 1632.

For text treatment of this subject see vol. 13 Cal. Jur. 926.

5834. Custody of legitimate child.

Under this section the father and mother of a legitimate unmarried child are equally entitled to its custody, and where a father, deeming the mother unfit to have charge of a child, had placed it in the care of his sister and her husband, the latter were his agents empowered to resist attempts of the mother to regain its custody by habeas corpus and the court could properly permit an investigation into facts which would have been available to the father if attempt had been made to take the child from him. *In re Thompson*, 77 Mont. 466, 251 Pac. 163.

Health of child as consideration in awarding custody, note, 48 A. L. R. 137.

Action between parents for the sole purpose of determining custody of child

as a proper remedy, note, 40 A. L. R. 940.

One parent's attempt at bastardizing child as affecting right to custody, notes, 4 A. L. R. 1119; 37 A. L. R. 531.

Minority of parent as affecting right to custody of child, note, 19 A. L. R. 1043.

Nonresidence as affecting one's right to award of custody of child, note, 20 A. L. R. 838.

Agreement between parents as to religious education and nurture of child, note, 12 A. L. R. 1153.

Mother's right to custody of child as affected by father's contract with third person, note, 38 A. L. R. 222.

For text treatment of this subject see vol. 13 Cal. Jur. 151; 20 Cal. Jur. 411.

5837. Custody of illegitimate child.

Cited in *In re Thompson*, 77 Mont. 466, 474, 251 Pac. 163.

For text treatment of this subject see vol. 13 Cal. Jur. 936.

Mother's right to custody of illegitimate child, note, 51 A. L. R. 1507.

5841. When parental authority ceases.

Cited in *State ex rel. Foot v. District Court*, 77 Mont. 290, 292, 49 A. L. R. 398, 250 Pac. 973.

5846. Husband not bound for the support of his wife's children by a former marriage.

Cited in *State ex rel. Sheedy v. District Court*, 66 Mont. 427, 431, 213 Pac. 802.

5856. Who may adopt minor child.

Under this section only persons who are or may become citizens of the United States may adopt a minor child. *State*

ex rel. Thompson v. District Court, 75 Mont. 147, 242 Pac. 959.

5859. Consent of child's parent.

Under this section, providing that a legitimate child cannot be adopted without the consent of its parents, and section 5861 declaring that consent must be in writing, the court was without jurisdiction to enter an order of adoption where, the father consenting, the written consent of the mother was absent. *State ex rel. Thompson v. District Court*, 75 Mont. 147, 242 Pac. 959.

son v. District Court, 75 Mont. 147, 242 Pac. 959.

The provision of this section that a legitimate child cannot be adopted without the consent of its "parents," refers only to the lawful father and mother by blood, and not to a stepfather or stepmother, and that therefore the consent of a stepfather to the adoption of children of his deceased wife by their aunt is not necessary. *State ex rel. Sheedy v. District Court*, 66 Mont. 427, 213 Pac. 802.

Cited in *In re Thompson*, 77 Mont. 466, 468, 251 Pac. 163; *Gravelin v. Porier et al.*, 77 Mont. 260, 279, 250 Pac. 823.

For text treatment of this subject see vol. 1 Cal. Jur. 435.

5863. Effect of adoption.

Sections 5863, 5864 were cited in *State ex rel. Thompson v. District Court*, 75 Mont. 147, 153, 242 Pac. 959.

Validity and effect of preadoption agreement derogating from the status or rights of an adopted child as fixed by statute, note, 9 A. L. R. 1627.

Right of child adopted after testator's

death to take under will, note, 5 A. L. R. 1280.

Right of children of an adopted child to take the share which the parent would have taken if he had survived the testator, note, 8 A. L. R. 1012.

For text treatment of this subject see vol. 1 Cal. Jur. 442.

CHAPTER 9.**GUARDIAN AND WARD.****5878. Rules of awarding custody of minors.**

In awarding the custody of a minor, the welfare of the child is to be regarded more than the technical rights of the parents, and the decision of the district judge ought not to be disturbed except upon a clear showing of abuse of discre-

tion lodged in him. *In re Thompson*, 77 Mont. 466, 251 Pac. 163.

Cited as section 3783, Revised Codes, in *Boles v. Boles*, 60 Mont. 411, 414, 199 Pac. 912.

Minority of parent as affecting right to guardianship of child, note, 19 A. L. R. 1043.

Bastardizing child as affecting right to

appointment as guardian, note, 37 A. L. R. 531.

For text treatment of this subject see vol. 13 Cal. Jur. 149.

5881. Duties of guardian of estate.

Sections 5881, 5882 were cited in *Pethybridge v. First State Bank of Livingston*, 75 Mont. 173, 179, 243 Pac. 569.

Right of guardian to expend principal of ward's estate for support and maintenance, note, 5 A. L. R. 632.

Constitutionality of statute authorizing

guardian to sell or lease land of ward, note, 4 A. L. R. 1552.

Court's power to authorize guardian to borrow ward's money, note, 30 A. L. R. 461.

For text treatment of this subject see vol. 13 Cal. Jur. 173.

5888. Release by ward.

Courts look upon settlements made by guardians with wards recently coming of age, as well as transactions between them, with distrust, and from the confidential relation existing between them it will be presumed that the ward was acting under the influence of the guardian and such transactions held constructively fraudulent and set aside unless shown to have been the deliberate act of the ward with full knowledge. In *re Cuffe's Estate*, 63 Mont. 399, 207 Pac. 640.

Evidence in a proceeding on the final account of the guardian held to show a

ratification by the ward of the acts of the guardian, that in ratifying he was in no manner acting under the influence of the guardian, and that the ratification was such a one as is allowed by this section. In *re Cuffe's Estate*, 63 Mont. 399, 207 Pac. 640.

Lapse of time after guardian's settlement as affecting his liability, note, 50 A. L. R. 61.

For text treatment of this subject see vol. 13 Cal. Jur. 198.

PART III.

Corporations.

CHAPTER 1.

THE CREATION OF PRIVATE CORPORATIONS.

5901. What are public and what private corporations.

Cited in *Crow Creek Irr. Dist. v. Crittenden*, 71 Mont. 66, 69, 227 Pac. 63.

For text treatment of this subject see vol. 6 Cal. Jur. 605.

5905. Articles of incorporation—What to contain.

Cited in *Alley v. Butte & Western Mining Co.*, 77 Mont. 477, 491, 251 Pac. 517.

For text treatment of this subject see vol. 6 Cal. Jur. 626.

5909. Filing articles of incorporation.

Cited in *State ex rel. Lockwood v. Tyler*, 64 Mont. 124, 138, 208 Pac. 1081.

corporation, notes, 22 A. L. R. 376; 37 A. L. R. 1319.

Effect upon the corporate existence of failure to file certificate in organizing a

For text treatment of this subject see vol. 6 Cal. Jur. 638.

5916.1. Continuous succession certain corporations authorized. Any corporation organized under the laws of the territory or state of Montana, which was on the fifth day of March, 1903, subject to the provisions of sections 860, 861, 862, 863 and 865 of the Civil Code of Montana of

1895, is hereby authorized to amend its articles of incorporation so as to hereafter have and enjoy the privilege of continual succession conferred upon corporations thereafter organized under the provisions of the act approved March 5, 1903, (Laws of Montana 1903, chapter LXX, entitled: "An act to amend sections 860, 861, 862, 863 and 865 of the Civil Code, relating to religious, social and benevolent corporations"), or under laws amendatory thereof or supplemental thereto, by resolution to that effect, adopted (a) at any regular annual meeting of the members of the corporation, or (b) at any special meeting of the members regularly called for the purpose by the directors or governing committee, or (c) at any meeting of the directors or governing committee upon the written consent of the majority of the members of the corporation; provided, that such resolution is adopted prior to the expiration of the period of forty years from and after the date of the filing of the original articles of incorporation. The resolution of amendment may be adopted at a meeting of the members upon the affirmative vote of a majority of the members then present, provided that a quorum of the members, as defined by the constitution or by-laws of the corporation, are present.

En. Sec. 1, Ch. 27, L. 1925.

5916.2. Certificate to be filed with county clerk. A certificate of the action of the directors or governing committee, signed by them and their secretary, when the resolution is adopted upon the written consent of the members, or a certificate of the proceedings of the meeting of the members, when the resolution is adopted at such meeting, signed by the chairman and secretary of the meeting and a majority of the directors, shall be filed in the office of the clerk of the county wherein the original articles of incorporation are filed, and a certified copy thereof in the office of the secretary of state; and thereafter the corporation shall have continual succession, under the provisions of the act of March 5, 1903, (Laws of Montana 1903, chapter LXX), and laws amendatory thereof or supplemental thereto, which may be applicable thereto, and shall possess all the rights and powers, and be subject to all the obligations, restrictions and limitations prescribed thereby.

En. Sec. 2, Ch. 27, L. 1925.

CHAPTER 2.

CHANGES IN CORPORATE ORGANIZATION AND MANAGEMENT.

5918. Amendment articles of incorporation. Any corporation now existing or hereafter organized under the laws of the state of Montana may, in the manner herein provided, amend its articles of incorporation by changing the name, place of business or number of directors, by changing the number, par value, character, class or preference of its shares of capital stock, by increasing or decreasing the capital stock, by changing or extending its business to embrace any purpose for which corporations may be organized under the laws of Montana, by extending its term of existence within the limits provided by law, or by an amendment in respect to any other matter which might lawfully have been originally provided in such articles of incorporation.

Amd. Sec. 1, Ch. 28, L. 1925.

For text treatment of this subject see vol. 6 Cal. Jur. 642.

5926. Extension term of corporate existence. Any corporation organized under the laws of the territory or state of Montana, whether organized previous to or after the taking effect of the codes of July 1, 1895, shall have power to extend the term of its existence, in the manner provided by law, for consecutive periods of not to exceed forty years each; provided, that at the time of any such extension the unexpired portion of its then authorized term of existence plus the term of the proposed extension shall not exceed forty years and sixty days; and provided further that nothing herein shall limit the existence of any corporation that may be by law permitted continual existence; and, provided further, that the state reserves the right to at any time alter, revoke or amend the powers and privileges herein granted to corporations.

Amd. Sec. 2, Ch. 28, L. 1925.

For text treatment of this subject see vol. 6 Cal. Jur. 650.

5929. Procedure to create or increase bonded indebtedness of corporation.

Rep. Sec. 1, Ch. 114, L. 1927.

CHAPTER 3.

BY-LAWS.

5930. By-laws, adoption of—when, how, and by whom.

Sections 5930, 5931 were cited in *Alley v. Butte & Western Mining Co.*, 77 Mont. 477, 491, 251 Pac. 517.

5931. By-laws—May provide for what.

Cited in *Aetna Casualty & Surety Co. v. American Brewing Co.*, 63 Mont. 474, 479, 208 Pac. 921.

5932. By-laws, recording and amendment of.

Cited in *Aetna C. & S. Co. v. American B. Co.*, 63 Mont. 474, 482, 208 Pac. 921.

CHAPTER 4.

DIRECTORS.

5933. Corporate powers and business exercised by board of directors—Number and membership of board—Quorum.

Where the ends of justice require it, corporate entity will be disregarded by a court of equity, as where the business of the corporation is being conducted by dummies, or where it is used as a mere fiction under the cloak of which business is being transacted. *Scott v. Prescott*, 69 Mont. 540, 223 Pac. 490.

The directors of a corporation act for it only as a body and therefore admissions or declarations of an individual director are not binding upon it unless authority to make them was duly conferred. *Raish v. Orchard Canal Co.*, 67 Mont. 140, 218 Pac. 655.

Declarations of an officer or agent of a corporation bind the principal only when made by him while acting within the scope of his authority, and then only as part of the *res gestae*, if made at the very time the transaction to which they related took place. *Raish v. Orchard Canal Co.*, 67 Mont. 140, 218 Pac. 655.

The secretary of a corporation has not, by virtue of his office alone, authority to bind it by contract. *Aetna Casualty & Surety Co. v. American Brewing Co.*, 63 Mont. 474, 208 Pac. 921.

Cited in *Raish v. Orchard Canal Co.*, 67 Mont. 140, 144, 218 Pac. 655. Applied

with section 6004 as section 3833, Revised Codes, in *Wortman v. Luna Park Amusement Co.*, 61 Mont. 89, 201 Pac. 570.

Cited as section 3833, Revised Codes, in *Kirkup v. Anaconda Amusement Co.*, 59 Mont. 469, 482, 17 A. L. R. 441, 197 Pac. 1005.

Disregarding corporate existence, notes, 1 A. L. R. 610; 34 A. L. R. 597.

Character or ability as a qualification of membership of board of directors, note, 30 A. L. R. 248.

Power of directors to change time for stockholders' meetings, notes, 2 A. L. R. 558; 8 A. L. R. 678.

Power of directors to sell property of corporation without consent of stockholders, note, 5 A. L. R. 930.

Power of directors to pay bonus or pension to officers or employees, note, 40 A. L. R. 1423.

Directors' right to inspect books and records, note, 22 A. L. R. 59.

For text treatment of this subject see vol. 6 Cal. Jur. 591; 6 Cal. Jur. 1065.

5938. Organization of board of directors, etc.

Cited in *Alley v. Butte & Western Mining Co.*, 77 Mont. 477, 492, 251 Pac. 517; *Aetna Casualty & Surety Co. v.*

American Brewing Co., 63 Mont. 474, 479, 208 Pac. 921.

5939. Dividends to be made from surplus profits.

This section, before amendment, making the directors of a corporation individually liable to the corporation and its creditors, in the event of its dissolution, to the full amount of debts contracted by them in excess of its subscribed capital stock, was penal in character and their liability was not created by contract. *Continental Oil Co. v. Montana C. Co.*, 63 Mont. 223, 207 Pac. 116.

Where an existing statute is amended "to read as follows," etc., the legislative assembly evinces an intention to make the new act a substitute for the old one and that so much only of the original act as is repeated in the new one is continued in force, and all portions omitted from the new act are repealed. *Continental Oil Co. v. Montana C. Co.*, 63 Mont. 223, 207 Pac. 116.

The repeal of a statute without any saving clause takes away all the remedies existing under the repealed act and defeats all actions pending under it at the time of its repeal, and particularly so where the repeal is of a statute which creates a cause of action and provides a remedy not known to the common law. *Continental Oil Co. v. Montana C. Co.*, 63 Mont. 223, 207 Pac. 116.

Under the above rules, in an action for the appointment of a receiver for a corporation by a creditor for the purpose of enabling the latter to prosecute an action against its directors to recover on their personal liability imposed upon them by this section before amendment, for incurring debts in excess of the subscribed capital stock of the corporation, the effect of chapter 37, L. 1919, amending section 3837, was to repeal that portion of the section imposing personal liability upon the directors, and, in the absence of a saving clause in the amendatory act, to take away the right of action against the directors. *Continental*

Oil Co. v. Montana C. Co., 63 Mont. 223, 207 Pac. 116.

The liability of directors under this section, not being founded in contract and there being no vested interest in an unenforced penalty, chapter 37, L. 1919, taking away the right of action against the directors of a corporation for incurring debts in excess of its subscribed capital stock, held not invalid as impairing the obligation of contract or interfering with vested rights. *Continental Oil Co. v. Montana C. Co.*, 63 Mont. 223, 207 Pac. 116.

This section in relieving directors of the penalty imposed by section 3837, Revised Codes, 1907, is not objectionable as in contravention of section 13, article XV, of the constitution or violative of section 3 of the code, providing that no law is retroactive unless expressly so declared. *Continental Oil Co. v. Montana C. Co.*, 63 Mont. 223, 207 Pac. 116.

Dividends on nonpar stock, notes, 36 A. L. R. 794; 45 A. L. R. 1505.

Guaranteeing dividends on corporate stock as contrary to public policy, note, 24 A. L. R. 986.

Right to fix wages or salaries of working stockholders above those current for similar services, note, 48 A. L. R. 508.

Rights of holders of preferred stock in respect to dividends, notes, 6 A. L. R. 802; 13 A. L. R. 426; 48 A. L. R. 80.

Rights of assignee of preferred stock in respect to dividends, note, 6 A. L. R. 807.

Relative rights of life beneficiaries and remaindermen in dividends on preferred stock, note, 24 A. L. R. 82.

Right of preferred stockholder to maintain action for dividends, note, 6 A. L. R. 832.

Certificate of stock as conclusive and exclusive evidence of stockholders' rights, note, 31 A. L. R. 1326.

Jurisdiction of action as to payment of

dividends by a foreign corporation, notes, 18 A. L. R. 1402; 32 A. L. R. 1355.

For text treatment of this subject see vol. 6 Cal. Jur. 852.

5942. False certificate, report or notice.

Quaere: May a corporation be held liable for injury resulting to a person from the issuance of a false certificate issued by its secretary, in view of this section, providing that for such an act the officer himself shall respond in dam-

ages? *Aetna C. & S. Co. v. American B. Co.*, 63 Mont. 474, 208 Pac. 921.

For text treatment of this subject see vol. 7 Cal. Jur. 37.

5942.1. Authority to change insurance on officers of corporations how evidenced. (a) Whenever a corporation, organized under the laws of this state, has heretofore caused or shall hereafter cause to be insured the life of any director, officer, agent or employee, or whenever such corporation is named as a beneficiary in or assignee of any policy of life insurance, due authority to effect, assign, release, relinquish, convert, surrender, change the beneficiary, or to take any other or different action with reference to such insurance, shall be sufficiently evidenced to the insurance company by a written statement to that effect, signed by the president and the secretary or other corresponding officers of such corporation, under its corporate seal. Such statement shall be binding upon such corporation and shall protect the insurance company concerned in any act done or suffered by it upon the faith thereof without further inquiry into the validity of the corporate authority or the regularity of the corporate proceedings.

(b) No person shall be disqualified, by reason of interest in the subject matter, from acting as a director or as a member of the executive committee of such corporation on any corporate act touching such insurance.

En. Sec. 1, Ch. 31, L. 1927.

CHAPTER 5.

MEETINGS OF STOCKHOLDERS AND DIRECTORS—ELECTIONS.

5944. Special meeting—How called.

Under the express terms of this section the method therein provided for the calling of special meetings of the directors of a corporation has no application where the by-laws declare how such meetings shall be called. *Aetna C. & S.*

Co. v. American B. Co., 63 Mont. 474, 208 Pac. 921.

For text treatment of this subject see vol. 6 Cal. Jur. 1051.

5947. Stock of minors, etc.—How represented.

The provision of this section that shares of stock owned by an estate may be represented by the executor or administrator, is broad enough to include a special administrator, if under any conceivable circumstances the probate court may authorize such officer, in the absence of statute in terms permitting it, to vote

such stock. *Gow v. Cascade Silver Mines & Mills Co.*, 66 Mont. 488, 213 Pac. 1092. Cited in *Springhorn v. Dirks et al.*, 72 Mont. 121, 134, 231 Pac. 912.

For text treatment of this subject see vol. 6 Cal. Jur. 891.

CHAPTER 6.

CORPORATE STOCKS AND THE RIGHTS OF STOCKHOLDERS.

5952. Who are members and who are stockholders of corporations.

Cited as section 3822, Revised Codes, in *Gallatin County F. Alliance v. Flannery*, 59 Mont. 534, 537, 197 Pac. 996.

5953. Certificates of stock—How and when issued.

Cited as section 3854, Revised Codes, 59 Mont. 469, 485, 17 A. L. R. 441, 197 Pac. 1005.
in *Kirkup v. Anaconda Amusement Co.*,

5966. Liability of stockholders.

Cited as section 3853, Revised Codes, 59 Mont. 469, 485, 17 A. L. R. 441, 197 Pac. 1005.
in *Kirkup v. Anaconda Amusement Co.*,

CHAPTER 8.

POWERS AND DUTIES OF CORPORATIONS.

5994. Powers of corporations.

In the absence of a state statute prohibiting ordinary industrial corporations from borrowing money on promissory notes, or a showing that a particular corporation by its articles of incorporation or its by-laws is prohibited from so doing, a mining corporation, under this section, impliedly granting such power when necessary to be exercised in the transaction of its ordinary affairs or for corporate purposes, may do so. *Alley v. Butte & Western Min. Co.*, 77 Mont. 477, 251 Pac. 517.

Sections 5994-5996 were cited in *Alley v. Butte & Western Mining Co.*, 77 Mont. 477, 491, 251 Pac. 517.

Cited in *Aetna Casualty & Surety Co. v. American Brewing Co.*, 63 Mont. 474, 479, 208 Pac. 921. Applied with sections 5933 and 6004 as section 3889, Revised Codes, in *Wortman et al. v. Luna Park*

Amusement Co., 61 Mont. 89, 201 Pac. 570.

Right to use funds or property for humanitarian purposes, note, 3 A. L. R. 443.

Power to pay bonus or pension to officers or employees, note, 40 A. L. R. 1423.

Power to guarantee for accommodation the contracts of its customers or vendors with third persons, note, 11 A. L. R. 554.

Power to pass title to real property held in excess of powers, note, 37 A. L. R. 204.

Forfeiture or expiration of charter as affecting powers with respect to contracts, note, 47 A. L. R. 1366, 1368.

For text treatment of this subject see vol. 7 Cal. Jur. 49.

6000. Corporations to organize within one year.

Cited as section 3892, Revised Codes, in *Scott v. Prescott*, 69 Mont. 540, 560, 223 Pac. 490.

6003. Annual statement of corporations. Every corporation, having a capital stock, except banks, trust companies, and building and loan associations, shall by March 1st of each year hereafter, file in the office of the county clerk and recorder of the county in which the principal place of business of such corporation is situated, (and a certified copy thereof in the office of the secretary of state,) a report of the condition of said corporation on December 31st preceding, which shall state the amount of the authorized capital stock, the proportion thereof actually paid in, and the amount thereof actually paid in in cash, and the amount issued, if any in payment of property purchased, services rendered, or labor performed, and the amount of existing debts, and also the names

and addresses of the directors or trustees, and of the president, vice-president, general manager (if any) and secretary and treasurer of the corporation. Such report shall be signed by the president or vice-president, and a majority of the directors, inclusive of the president or vice-president. The report shall be verified by the oath of the president, vice-president, secretary, or treasurer of such corporation. If the directors or trustees of any corporation shall fail to file such report, the directors of the corporation shall jointly and severally be liable for all debts or judgments of the corporation which may thereafter be in anywise incurred until such report shall be made and filed; provided, however, that if within twenty days of such failure a director or directors shall make and file, as aforesaid, an affidavit or affidavits stating that the failure was due to no fault or neglect of his or theirs, and stating also that, after the thirty-first day of December of the preceding year and before said March 1st he or they requested the president or a sufficient number of the other directors, whose residence was known to the affiants, to join them in making report, such director or directors shall not be liable under this section. If the required report be made and filed after the time herein specified, the directors shall not, on account of the prior failure to make report, be liable for the debts thereafter contracted. Where such corporation, on account of insolvency or for any other reason, has ceased to be a going concern, and has ceased voluntarily to incur financial obligations, the directors may include a statement to that effect in their report, giving the reasons for cessation of the corporate activities of such corporation, and after two annual reports containing such statement have been filed, the directors shall not be liable for a failure to file annual reports during the time of such cessation of corporation activities.

Amd. Sec. 1, Ch. 5, L. 1927.

The basis of an action to recover on the statutory liability of a director of a corporation for failure of the corporation to file the annual report of its financial condition required by this section is an antecedent debt due to plaintiff; the liability commences with and is dependent upon such debt at the time of the first default, is direct and primary and, having once attached, is not affected by the renewal of a note evidencing the debt, and is not renewed by subsequent defaults. *Williams v. Hilger et al.*, 77 Mont. 399, 251 Pac. 524.

Since chapter 140, L. 1909, making it the duty of corporations to file an annual report of their financial condition under the penalty of the directors being held liable for the debts of the corporations, was repealed by chapter 189, L. 1919, without a saving clause, directors sued in 1923 on their statutory liability under section 6003 for failure to file a report for 1921 were precluded from setting up the omission of their company to file a report for 1918 under the repealed act as the foundation for a plea that the action against them was barred by section 9061, Revised Codes, providing that an

action to recover the penalty in question must be brought within three years. *First National Bank of Plains v. Barto et al.*, 72 Mont. 437, 233 Pac. 963.

The provisions of this section declaring that the directors and trustees of a corporation who fail to file with the county clerk and recorder of the county of its principal place of business an annual report of its condition shall jointly and severally be liable for all corporate debts or judgments then existing, or which may thereafter be incurred, until such report is made and filed, are applicable to co-operative associations organized for profit. *Anderson v. Equity Co-operative Assn.*, 67 Mont. 291, 215 Pac. 802.

Under this section as amended by the act of 1919, the statement was not required to be filed before March 1, 1920, and therefore on the facts stated in the opinion the company was not in default at the time the action was commenced, and hence, there being no existing liability on the part of the directors at that time, the complaint did not state a cause of action. *First Nat. Bank of Brockton v. Cosier et al.*, 66 Mont. 352, 213 Pac. 442.

The liability of a director for the debts

of his corporation imposed by this section, for failure of the corporation to file its annual report exhibiting its financial condition, etc., does not arise out of a contract, express or implied, for the direct payment of money, and that therefore a writ of attachment was improperly issued in an action by a creditor of a corporation against one of its directors to recover a debt owing to plaintiff by the corporation. *Butler v. Peters*, 62 Mont. 381, 26 A. L. R. 560, 205 Pac. 247.

The liability created by this section is in the nature of a penalty imposed for omission to obey the mandate of the law and is not contractual in character. *Butler v. Peters*, 62 Mont. 381, 26 A. L. R. 560, 205 Pac. 247.

Cited in *Benson-Stabeck Co. v. Farmers E. Co. et al.*, 66 Mont. 395, 404, 214 Pac. 600; *Continental Oil Co. v. Montana C. Co.*, 63 Mont. 223, 229, 207 Pac. 116.

CHAPTER 9.

PROCEDURE FOR SALE OF THE PROPERTY OF A CORPORATION.

6004. Procedure for sale, lease, etc., of corporate property.

Under the common-law powers reserved to corporations by the proviso in this section and enumerated in a general way in sections 5933 and 5994, the board of directors of a going corporation could, in the proper pursuit of its business and within the purposes of its creation, against the dissent of a minority of its stockholders, sell a leasehold interest in realty with improvements thereon, and where such sale was made before plain-

tiffs had judgment against the selling corporation, they acquired no title under execution sale, and nonsuit was properly granted in their action in ejectment against the purchaser. *Wortman v. Luna Park Amusement Co.*, 61 Mont. 89, 201 Pac. 570.

For text treatment of this subject see vol. 7 Cal. Jur. 79.

CHAPTER 10.

CORPORATE RECORDS.

6008. Corporate records—To consist of what, and how kept.

Cited in *Aetna C. & S. Co. v. American B. Co.*, 63 Mont. 474, 482, 208 Pac. 921.

CHAPTER 12.

SCOPE OF LAW—RIGHT OF LEGISLATURE TO REPEAL.

6013. Chapter and section may be repealed.

Cited in *Mid-Northern Oil Co. v. Walker et al.*, 65 Mont. 414, 429, 211 Pac. 353.

CHAPTER 13.

BANKS—TRUST AND INVESTMENT COMPANIES—STATE BANKING DEPARTMENT.

6014 to 6085 inclusive. Relating to banks—Trust and Investment Companies and the state banking department.

Rep. Sec. 144, Ch. 89, L. 1927.

6014. Bank act in general.

Rep. Sec. 144, Ch. 89, L. 1927.

Sections 6014-6086 were cited in *State v. Yegen*, 74 Mont. 126, 140, 238 Pac. 603.

Sections 6014-6109 were cited in

re Lockhart, 72 Mont. 136, 140, 232 Pac. 183.

6014A. Definitions.

Rep. Sec. 144, Ch. 89, L. 1927.

This section, providing that a bank is insolvent when its capital surplus and undivided profits are absorbed in losses "and the remaining assets will not be sufficient to discharge" its debts, construed to mean "and the remaining assets will not [when converted into cash at

their present value] be sufficient," etc. State ex rel. Boone v. Tullock, 72 Mont. 482, 234 Pac. 277.

Cited in State ex rel. Butte etc. Co. v. District Court, 75 Mont. 567, 577, 244 Pac. 489; as section 1, chapter 90, L. 1923, in State v. Yegen, 74 Mont. 126, 140, 238 Pac. 603.

6014.1. Title and scope of act. This act shall be known as the "Bank Act" and shall be applicable to all corporations and persons specified in the next section, and to such other corporations as shall subject themselves, to special provisions and sections thereof, and to such other persons, copartnerships, or corporations who shall by violating any of its provisions become subject to the penalties provided therein.

En. Sec. 1, Ch. 89, L. 1927.

For text treatment of this subject see vol. 4 Cal. Jur. 100.

NOTE.—This act is a complete codification of the banking laws of the state. The repealing clause showing sections of the Revised Codes of 1921 superseded by it will be found at section 6014.144 of this supplement.

6014.2. Institutions to which act is applicable. The word "bank," as used in this act, shall be construed to mean any corporation which shall have been incorporated to conduct the business of receiving money on deposit, or transacting a trust or investment business as hereinafter defined. The soliciting, receiving, or accepting of money or its equivalent on deposit as a regular business, shall be deemed to be doing a commercial or savings bank business, whether such deposit is made subject to check or is evidenced by a certificate of deposit, a pass-book, a note, or other receipt; provided, that nothing herein shall apply to or include money or its equivalent left in escrow, or left with an agent pending investment in real estate or securities for or on account of his principal. It shall be unlawful for any corporation, partnership, firm, or individual to engage in or transact a banking business within this state, except by means of a corporation duly organized for such purpose. Banks are divided into the following classes:

- (a) Commercial banks,
- (b) Savings banks,
- (c) Trust companies,
- (d) Investment companies,

provided, further, however, that this act shall not apply to any person, firm or association now doing a private banking business; provided, however, that said private banks hereinabove referred to shall come under all of the provisions of this act which may be fairly applicable thereto; provided further, however, that this act shall not apply to any investment company or corporation, heretofore established under authority of the law of Montana, not accepting, receiving, and holding money on deposit.

En. Sec. 2, Ch. 89, L. 1927.

6014.3. Number of persons necessary to form corporation. Corporations may be formed by any number of natural persons not less than

three under the laws of this state to conduct, as provided in this act and not otherwise, any one, or more, or all of the businesses mentioned in the preceding section.

En. Sec. 3, Ch. 89, L. 1927.

6014.4. Definitions of banks, etc.—Commercial bank defined. (a) The term “commercial bank,” when used in this act, means any bank authorized by law to receive deposits of money, deal in commercial paper, or to make loans thereon, and to lend money on real or personal property, and to discount bills, notes, or other commercial papers, and to buy and sell securities, gold and silver bullion, or foreign coins, or bills of exchange.

(b) **Savings bank defined.** The term “savings bank,” when used in this act, means a bank organized only for the purpose of accumulating and loaning the funds of its members, stockholders, and depositors, and which may loan and invest the funds thereof, receive deposits of money, loan, invest, and collect the same, with interest, and repay depositors with or without interest; with power to invest said funds and moneys in such property, securities, and obligations as may be prescribed by this act; and to declare and pay dividends on its general deposits, and a stipulated rate of interest on deposits made for a stated period, or upon special terms.

(c) **Trust company defined—Purposes for which may be formed.** The term “trust company,” when used in this act, means any corporation which is incorporated under the laws of this state for any one or more of the following purposes:

1. To receive moneys in trust, and to accumulate the same at such rates of interest as may be obtained or agreed upon, or to allow such interest thereon as may be agreed upon.

2. To accept and execute all such trusts and perform such duties of every description as may be committed to them by any person or persons whatsoever, or by any corporations, or may be committed or transferred to them by order of any of the courts of record of this state, or any other state, or of the United States.

3. To take and accept by grant, assignment, transfer, devise, or bequest, and hold any real or personal estate or trust created in accordance with the laws of this state, or any other state, or of the United States, and execute such legal trusts in regard to the same on such terms as may be declared, established, or agreed upon in regard thereto.

4. To act as agent for the investment of money for other persons or corporations, and as agents for persons and corporations for the purpose of issuing, registering, transferring, or countersigning the certificates of stock, bonds, or other evidence of debt of any corporation, association, municipality, state, or public authority as may be agreed upon.

5. To accept from and execute trusts for married women in respect to their separate property, whether real or personal, and act as agents for them in the management of such property, and generally to have and exercise such powers as are usually had and exercised by trust companies.

6. To act as trustee, assignee, or receiver in all cases where it shall be lawful for any court of record, officer, corporation, or person to appoint a trustee, assignee, or receiver, and to be appointed a trustee, assignee, or receiver, and to be appointed, commissioned, and act as administrator of any estate, executor of any last will and testament of any deceased person, and as guardian of the person and estate of any minor or minors, or of the estate of any lunatic, imbecile, spendthrift, habitual drunkard, or other persons disqualified or unable to manage their estates.

7. To loan money upon unencumbered real estate, collateral, or personal security, and execute and issue its notes, debentures, payable at a future date, and to pledge its mortgages upon real estate and other securities as security therefor.

8. To buy and sell government, state, county, municipal, and other bonds, and all kinds of negotiable, non-negotiable, and commercial paper, stocks, and other investment securities, buy and sell gold and silver bullion, foreign coins, bills of exchange, and foreign and domestic exchange.

9. To accept, receive, and hold money on deposit, payable either on time or on demand, with or without interest, as may be agreed upon with the depositors, and to take and receive from any individual or corporation on deposit for safekeeping and storage, gold and silver plate, jewelry, stocks, and securities, and other valuable and personal property, and to collect coupons, interest, and dividends on said above-described securities, and to rent out the use of safes and other receptacles on their premises upon such terms and for such compensation as may be agreed upon.

(d) **Investment company defined—Purposes for which may be formed.** The term "investment company," when used in this act, means any corporation which is incorporated under the laws of this state for any one or more of the following purposes:

1. To receive moneys in trust, and to accumulate the same at such rates of interest as may be obtained or agreed upon, or to allow such interest as may be agreed upon, and to issue and sell its contracts or certificates of indebtedness directly or through an agent or broker, bearing fixed rates of interest, in whole or in part, which participation or nonparticipation in the profits of the corporation, and maturing at fixed periods of time, or otherwise, as may be fully set forth in said contracts or certificates.

2. To buy and sell government, state, county, municipal, and other bonds, and all kinds of negotiable and non-negotiable and commercial paper, stocks, and other investment securities.

3. To accept, receive, and hold money on deposit, payable either on time or on demand, with or without interest, as may be agreed upon with depositors, and to collect coupons, interest, and dividends on said above described securities.

(e) **Unincorporated and private bank defined.** The term "unincorporated bank" shall comprehend "private bank," and shall include every unincorporated person, firm or association transacting banking business in this state, and the term "board of directors" shall include the owner or owners of such banks.

6014.5. Definition of words and terms. (a) The terms "capital," "capital stock" or "paid-in capital" means that fund for which certificates of stock are issued to stockholders in case of incorporated banks and that fund set aside and dedicated for capital purposes in case of private banks.

(b) The term "surplus" means a fund paid in or created pursuant to the provisions of this act by a bank from its net earnings or undivided profits, which when set apart and designated as such, is not available for the payment of dividends and cannot be used for the payment of expenses or losses so long as such bank has undivided profits.

(c) The term "undivided profits" means the credit balance of the profit and loss account of any bank.

(d) The term "profit and loss account" or "profit and loss" means that account carried on the books of the bank into which all earnings accounts and recoveries are closed, thus exhibiting "gross earnings" and against which all loss and other disbursement items are charged revealing "net earnings" which are then properly closed to "undivided profits accounts" or "undivided profits," out of which dividends are paid and reserves set aside.

(e) The term "net earnings" means the excess of the gross earnings of any bank over expenses and losses chargeable against such earnings during any one year.

(f) The term "time deposits" means all deposits, the payment of which cannot legally be required within thirty (30) days.

(g) The term "demand deposits" means all deposits, the payment of which can legally be required when demanded.

(h) The words "consolidate" and "merge" shall be deemed to mean the same thing and may be so used interchangeably in this act without loss of power.

(i) The word "superintendent" wherever it appears in this act shall be deemed to mean "superintendent of banks" or "state superintendent of banks" of the state of Montana.

En. Sec. 5, Ch. 89, L. 1927.

6014.6. Organization and incorporation—Articles of agreement. Any three or more persons, desiring to associate themselves together for the purpose of becoming a corporation to engage in any one or more or all of the businesses mentioned in this act, shall sign and acknowledge, in the manner provided for the acknowledgment of deeds of real estate, articles of agreement, which shall set forth.

1. The corporate name of the proposed corporation which shall not be the name of any other corporation theretofore granted and then doing business of a similar character in this state, or any imitation of such name. Provided that it shall be lawful to use the name theretofore used by any corporation previously incorporated and doing business in the state of Montana, but which has been disincorporated, liquidated, dissolved and entirely out of business.

2. The name of the city or town and county in which the principal office of the corporation is to be located.

3. The amount of the capital stock of the corporation; the number of shares into which it is to be divided, and the par value of such shares;

the amount of capital stock actually subscribed in good faith at the time of the signing of such articles of agreement; and the amount of the capital stock actually paid up in lawful money of the United States, and in the custody of some banking institution designated as the depository thereof until the proposed corporation is fully organized and authorized to engage in business.

4. The names and places of residence of the several shareholders, and the number of shares subscribed by each.

5. The number of the board of directors, and the names of those agreed upon for the first year.

6. The purpose for which the association or company is formed, which may be set forth by the use of the general terms herein defined, with reference to each line of business in which the proposed corporation desires to engage.

Thereupon the articles of agreement shall be presented to the superintendent of banks, together with an application in writing in the form prescribed by the superintendent of banks for a certificate authorizing the proposed corporation to transact within this state the business specified therein. Upon the presentation of the articles of agreement, together with such application, the superintendent of banks shall examine or cause an examination to be made in order to ascertain whether the requisite capital of such bank has been subscribed and been paid up in cash. He shall also determine whether the corporation is being formed for any other than the legitimate business contemplated by this act, or whether the public convenience and advantage will be promoted by the opening of such bank, and whether the corporate name assumed by such bank, by reason of the use by it of any one or more of the words "commercial," "trust," "savings," or "investment," in conjunction with any other word or words, resembles so closely as to be likely to cause confusion, the name of any other bank previously formed under this act. He shall also ascertain from the best sources of information at his command whether the character and general fitness of the persons named as stockholders are such as to command the confidence of the community in which such bank is proposed to be located. The expenses of the superintendent of banks in making the examination required by this act shall be paid by the proposed bank, and payment shall be made in advance if required by the superintendent of banks.

If the superintendent of banks shall not be satisfied with the result of his investigation, he shall refuse the application within sixty (60) days after the articles of agreement and the application have been presented to him, and so notify the incorporators named therein. If the superintendent of banks shall be satisfied with the result of his investigation, he shall, within sixty (60) days after such application has been made to him, issue under his hand and official seal the certificate of authorization, required by this act, in duplicate. The articles of agreement, together with one of such certificates of authorization, so issued, by the superintendent of banks, shall be filed in the office of the clerk and recorder of the county in which is located the principal place of business of the proposed bank, and a certified copy of the articles of agreement, together with the other certificate of authorization issued by the superintendent of banks, shall be filed with the secretary of state.

Upon filing with the secretary of state, the articles of agreement, and the certificate of authorization, and paying the fee required for the filing of articles of incorporation, the secretary of state shall issue a certificate setting forth that such corporation has been duly organized, the amount of its authorized and subscribed capital, and the business in which it is to engage; and such certificate shall be taken by all courts of this state as evidence of the corporate existence of such bank. The person so signing and acknowledging the articles of agreement, and their associates and successors, shall thereupon become and be a body corporate with power of continual succession, and by such name they and their successors shall be entitled to have, possess, and enjoy all the rights and privileges conferred by this act. Provided, that any bank, trust company or investment company now existing, may at any time, within the period limited for its duration, elect to avail itself of the right of continual succession herein given, by filing its intention so to do in the office of the county clerk and recorder of the county wherein such corporation is located and a copy thereof with the secretary of state, by paying the legal filing fees therefor. No such corporation shall be allowed to increase its capital stock by such filing without complying with the provisions of this act and paying the legal filing fees as in such cases otherwise provided.

En. Sec. 6, Ch. 89, L. 1927.

For text treatment of this subject see vol. 4 Cal. Jur. 115.

6014.7. Rejection of certificate by superintendent of banks conclusive. In the event the application for a certificate of authorization shall be refused by the superintendent of banks, such action shall be final and conclusive.

En. Sec. 7, Ch. 89, L. 1927.

6014.8. Amount of capital. The amount of the capital stock of a commercial bank shall not be less than twenty-five thousand dollars (\$25,000) and in addition thereto there shall be created a surplus of not less than ten per cent (10%) of the amount of the capital stock of said bank, which said surplus and capital stock shall be paid up in cash and deposited with some bank or banks at the time the application is made to the superintendent of banks for the certificate of authorization hereinabove mentioned.

That a commercial bank having its place of business in a city or town of not more than two thousand (2,000) and less than three thousand (3,000) inhabitants, as disclosed by the last authorized census, shall have a capital stock of not less than thirty-five thousand dollars (\$35,000), and a surplus of ten per cent (10%) of the capital stock as hereinbefore provided; that a commercial bank having its place of business in a city or town of more than three thousand (\$3,000) and less than four thousand (4,000) inhabitants, as disclosed by the last authorized census, shall have a capital stock of not less than forty thousand dollars (\$40,000) and a surplus of ten per cent (10%) of the capital stock as hereinbefore provided; that a commercial bank having its place of business in a city or town of more than four thousand (4,000) and less than six thousand (6,000) inhabitants, as disclosed by the last authorized cen-

sus, shall have a capital stock of not less than fifty thousand dollars (\$50,000) and a surplus of ten per cent (10%) of the capital stock as hereinbefore provided; that a commercial bank having its place of business in a city or town of more than six thousand (6,000) and less than ten thousand (10,000) inhabitants, as disclosed by the last authorized census, shall have a capital stock of not less than seventy-five thousand dollars (\$75,000) and a surplus of ten per cent of the capital stock as hereinbefore provided; that a commercial bank having its place of business in a city or town of more than ten thousand (10,000) inhabitants, as disclosed by the last authorized census, shall have a capital stock of not less than one hundred thousand dollars (\$100,000) and a surplus of ten per cent (10%) of the capital stock as hereinbefore provided.

The amount of the capital stock of a savings bank, trust company, or investment company shall be fixed and limited by the articles of agreement, and shall be not less than one hundred thousand dollars (\$100,000) nor more than ten million dollars (\$10,000,000), of which amount at least one hundred thousand dollars (\$100,000) must be subscribed and fully paid up in cash and on deposit with some bank or banks in this state when the application is made to the superintendent of banks for the certificate of authorization hereinabove mentioned. The remainder of the authorized capital stock may be subscribed and paid in at such times and under such regulations as the board of directors of such corporation may determine. The shares of the capital stock of all banks shall have a par value of one hundred dollars (\$100). No bank shall have preferred stock; provided that this act shall not require any bank in existence and doing business to increase its capital stock.

En. Sec. 8, Ch. 89, L. 1927.

6014.9. Calling of first meeting. When the formation of the corporation is completed under the provisions of this act by the issuance of the certificate of incorporation by the secretary of state, any three such incorporators signing the articles of agreement, may call the first meeting of the corporation at such time and place as they may appoint by giving notice thereof by publication in some newspaper of general circulation in the county in which the principal office for the transaction of business is to be located, at least five (5) days before the time appointed for such meeting. If all the subscribers to the capital stock unite in a call for such meeting, in writing, no notice is necessary. If the first meeting be not called within thirty (30) days from the date of the certificate of incorporation, or if such corporation shall fail to commence the business for which it is incorporated within ninety (90) days from the date of the issuance of the certificate of authorization, the superintendent of banks is authorized to cancel such certificate of authorization.

En. Sec. 9, Ch. 89, L. 1927.

6014.10. Board of directors—Qualifications, tenure, and vacancies. The affairs of the bank shall be managed by a board of directors, not less than three or more than eleven in number, all of whom shall be stockholders of such bank and citizens of the United States, and of whom at least three-fourths ($\frac{3}{4}$) must be residents of the state of Montana. No person who shall have been convicted of a crime against the banking

laws of the United States or of any state of the Union shall be elected a director. The directors shall be elected for a term of one year at the annual meeting of the stockholders, which shall be held on the second Tuesday in January of each year. In case the election shall not be made on the day fixed for the annual meeting, the corporation shall not thereby be dissolved, but an election may be had at any other time agreeable to the by-laws of the corporation, and the persons so elected shall hold their office until the second Tuesday in January following, or until others are elected and qualified. In case of death or resignation of one or more of said directors, the vacancy shall be filled by the board, and the directors so appointed shall hold office until the next annual election, at which time a director shall be elected to fill out the unexpired term. Every director shall take and subscribe an oath that he will diligently and honestly perform his duty in such office, and will not knowingly violate or permit a violation of any of the provisions of this act; that he is the owner in good faith of the required number of shares of stock in the bank standing in his name on the books of the bank. Such oaths shall be made in duplicate, one copy of which shall be transmitted to the superintendent of banks and filed in his office, and one copy shall be kept on file in the office of the bank.

En. Sec. 10, Ch. 89, L. 1927.

For text treatment of this subject see vol. 4 Cal. Jur. 154.

6014.11. Director must own not less than one thousand dollars in stock. No person shall be eligible for election as director of a bank unless he is a stockholder of the bank, owning in his own right shares thereof of the par value of at least one thousand dollars (\$1,000), and every person elected to be a director, who, after such election shall cease to be the owner in his own right of the amount of such stock aforesaid, or shall hypothecate or in any way pledge such stock as security for any loan or debt, shall immediately notify the superintendent of banks of such sale or hypothecation, and such director may be removed from the office of director by the superintendent of banks, unless such disability be removed by the acquisition of other shares of stock or release of such pledge within the time prescribed by the superintendent of banks.

En. Sec. 11, Ch. 89, L. 1927.

6014.12. Selection of officers and employees—Meetings and minutes thereof. The board of directors shall have power to elect a president, one or more vice-presidents, cashier, and one or more assistant cashiers, and such other officers and employees as they may from time to time deem to be to the best interest of the bank, and fix their compensation. The president and at least one vice-president shall be chosen from the board of directors. The board of directors shall also elect a secretary, who shall keep a correct report of the meetings of the board and of the stockholders in a book kept for that purpose, which minutes shall particularly disclose the date of the meetings and the names of the directors or stockholders present. This record of the meetings of the board of directors shall be subscribed to by the presiding officer and secretary. Such minutes shall be read and approved at the next succeeding meeting of the board of directors, and the minutes of such next

succeeding meeting shall show such fact. Such minute-book shall be kept in the office of the bank at all times, and shall be presented to the examiner at the time of his examination of the books, and it shall be the duty of such examiner to include in his report of examination of such bank a statement of the dates on which such meetings were held since the last examination of such bank by the examiner, and the names of the directors in attendance at each of said meetings. The board of directors of a bank must hold a meeting at least once a month. Any person who shall make a false entry in said book, or who shall change or alter any entry made therein, shall be deemed guilty of a misdemeanor.

En. Sec. 12, Ch. 89, L. 1927.

6014.13. By-laws. The persons signing the articles of agreement shall, at their first meeting, adopt by-laws for the government of the corporation, which by-laws may provide for:

1. The time, place, and manner of calling and conducting the meetings of the corporation;
2. The number of stockholders constituting a quorum;
3. The mode of voting by proxy;
4. The time of the annual election of directors, and the mode and manner of giving notice thereof;
5. The duties of officers;
6. The manner of election and the tenure of office of all officers other than the directors;
7. Suitable penalties for violation of by-laws, not exceeding in any case one hundred dollars (\$100) for any one offense.

The by-laws adopted must be certified to by a majority of the directors and the secretary of the corporation, and recorded in the book of by-laws, which said book shall be open to the inspection of the public during the office hours of each day, except holidays. A copy of the by-laws shall also be transmitted to the superintendent of banks. The by-laws may be repealed or amended, or new by-laws be adopted, at the annual meetings, or at any other meeting of the stockholders called for that purpose by the directors, by a vote representing two-thirds ($\frac{2}{3}$) of the subscribed stock, or the power to repeal and amend the by-laws and adopt new by-laws may, by a similar vote at the first meeting or any annual meeting, be delegated to the board of directors.

En. Sec. 13, Ch. 89, L. 1927.

6014.14. Increase or diminution of capital stock—Authorized. Any bank now organized and existing, and which may hereafter be organized, may increase or diminish its capital stock by complying with the provisions of this act, to any amount which may be deemed sufficient and proper for its purposes within the limits prescribed by this act.

En. Sec. 14, Ch. 89, L. 1927.

Reduction of capital stock and distribution of capital assets, note, 44 A. L. R. 11.

Comptroller's supervision of reduction of capital stock of national bank, note, 44 A. L. R. 34.

6014.15. Change of corporate name authorized. The corporate name of any bank now organized and existing, or which may hereafter be organized, may be altered, changed, or amended as in this act provided.

En. Sec. 15, Ch. 89, L. 1927.

Applicability to banking business of statutes as to doing business under as-

sumed or fictitious name or designation not showing names of persons interested, note, 45 A. L. R. 231.

6014.16. Change of place of business and number of directors authorized. Every bank now organized and existing, or which may hereafter be organized, may, upon approval of the superintendent of banks, change its principal place of business from one place to another, in the same county, or in an adjacent county, within this state, and may increase or diminish the number of trustees or directors in the manner hereinafter provided.

En. Sec. 16, Ch. 89, L. 1927.

6014.17. Procedure for carrying into effect the three foregoing sections. Whenever any bank shall decide to call a meeting of the stockholders for the purpose of increasing or diminishing the amount of its capital stock, or for changing its corporate name, or for changing its principal place of business, it shall be the duties of the trustees or directors to publish a notice signed by at least a majority of them in a newspaper in the county, if any shall be published therein, six successive weeks, and to deposit a written or printed copy thereof in the postoffice, addressed to each stockholder at his usual place of residence at least six weeks previous to the day of meeting, specifying the object of meeting, the time and place when and where such meeting shall be held, and the amount to which it shall be proposed to increase or diminish the capital, or the name to which it is proposed that the bank shall be changed, or to the new location or place to which the principal place of business shall be changed, and a vote of at least two-thirds ($\frac{2}{3}$) of all of the shares of stock shall be necessary for an increase or diminution of the amount of its capital stock, or to change its corporate name, or to change its principal place of business.

En. Sec. 17, Ch. 89, L. 1927.

6014.18. Certificate of proceedings—Contents and effect. If, at the time and place specified in the notice provided for in the last preceding section, the stockholders shall appear in person or by proxy representing not less than two-thirds ($\frac{2}{3}$) of all the shares of stock of the corporation, and shall organize by choosing one of the trustees or directors chairman of the meeting, and also a suitable person for secretary and proceed to a vote of those present in person or by proxy, and if, on counting the votes, it shall appear that two-thirds ($\frac{2}{3}$) of the number of votes representing all the capital stock have been cast in favor of increasing or diminishing the amount of capital stock, or of changing its corporate name, or of changing its principal place of business, a certificate of the proceedings showing a compliance with the provisions of this act, the amount of capital stock actually paid in, the whole amount of debts and liabilities of the corporation, the amount to which the capital stock shall be increased or diminished, or the change in the corporate name of the corporation, or the change in the principal place of business, shall be made out, signed, and verified by the affidavit of the chairman, and be countersigned by the secretary, and such certificate shall be acknowl-

edged by the chairman. Said certificate shall then be sent to the superintendent of banks, who shall within thirty (30) days of the receipt thereof, either approve or reject the application for change. The action of the superintendent of banks on said application shall be final. If he approves the same he shall notify the bank whereupon the certificate shall be filed in the office of the county clerk and recorder of the county wherein the bank is located and in the office of the secretary of state. Upon such filing the change shall be effective.

En. Sec. 18, Ch. 89, L. 1927.

6014.19. Change of board by directors. A state bank may increase or diminish the number of its directors at any regular annual meeting of the stockholders of said bank, provided that the number of directors shall not at any time be less than three (3) nor more than eleven (11). The matter of changing the number of directors may be submitted to any annual meeting of the stockholders without special notice and if two-thirds ($\frac{2}{3}$) of the total number of shares of the bank shall vote in favor of such change, the result of the vote on the proposal to change, shall be certified to the state superintendent of banks for his approval or disapproval. If he shall approve the proposed change and signify the same in writing, the change shall then be effective, but if he shall disapprove the proposition to make said change, his action will be final and conclusive. In case the state superintendent of banks shall approve of a change to increase or diminish the number of directors and shall so notify the officers of the bank the order of approval shall be filed with the records and papers of said bank, and the number of directors shall from the date of said approval by the superintendent of banks, be in accordance with the vote of the stockholders as herein provided. In any event the superintendent of banks must, within thirty (30) days from the receipt of any application, notify the officers of the bank in writing of his action upon the application.

En. Sec. 19, Ch. 89, L. 1927.

6014.20. Dissolution and disincorporation. Commercial banks, savings banks, trust companies and investment companies now organized and existing, or which may be hereafter organized, may be dissolved in the manner provided by the laws of Montana applicable to the dissolution of other corporations, except it shall be legal for any bank, upon a vote of two-thirds ($\frac{2}{3}$) of its stockholders at a special meeting called for that purpose in accordance with the by-laws of the bank, to voluntarily quit business and liquidate upon the payment of its debts, exclusive of liability to stockholders, or upon agreement with all of its creditors to a plan of liquidation. Any agreement made with creditors which does not contemplate the immediate payment thereof shall be subject to the approval of the state superintendent of banks, but nothing in this section contained shall prevent the superintendent from taking charge of any bank at any time when in his opinion the interests of creditors or stockholders are not being protected. The decision of the superintendent of banks in said matter to be controlling.

En. Sec. 20, Ch. 89, L. 1927.

Powers after forfeiture or expiration of corporate charter, note, 47 A. L. B. 1297.

6014.21. Stockholders' liability. The stockholders of every bank shall be severally and individually liable, equally and ratably, and not one for the other, for all contracts, debts, and engagements of such corporation, to the extent of the amount of their stock therein, at the par value thereof, in addition to the amount invested in such shares. No person holding stock as executor, administrator, guardian, or trustee, and no person holding such stock as a pledge or collateral security, shall be personally subject to any liability as stockholders in such corporation; but the person pledging such stock shall be considered as holding the same, and shall be liable as a stockholder accordingly, and the estate and funds in the hands of such executor, administrator, guardian, or trustee, shall be liable in like manner and to the same extent as the testator, intestate, ward, or the person interested in such trust fund would have been liable if he had been living or competent to act and hold the stock in his own name.

The stockholders in any bank who shall have transferred their shares or registered the transfer thereof, within six (6) months last before the failure of said bank to meet its obligations, or with knowledge of such impending failure, shall be liable to the same extent, as if they had made no such transfer to the extent that the subsequent transferee fails to meet such liability; but this provision shall not be construed to affect in any way recourse which such stockholder might otherwise have against those in whose name such shares are registered at the time of such failure.

At any time after taking possession of a bank for the purpose of liquidation, the liquidating officer, duly qualified under the laws, as soon as he ascertains that the assets of such bank will be insufficient to pay its debts and liabilities may proceed to collect and enforce the stockholders' liability. For that purpose he may institute and maintain, in his own name as such liquidating officer appropriate suits or actions in any state or federal court of competent jurisdiction. He may receive and receipt for moneys received on account of stockholders' liability and any money so paid to the liquidating officer by a stockholder in whole or partial satisfaction of his liability, shall not be deemed paid voluntarily, but shall give the stockholder the same protection to the extent of the amount paid as if the payments were made after suit by creditor or liquidating officer. The liquidating officer is authorized by and with the consent of the court having jurisdiction of such liquidation to compromise, settle and compound claims for stockholders' liability and such settlements and compromises when approved by the court shall be legal and binding upon all parties concerned, including creditors.

All sums collected by a liquidating officer on account of stockholders' liability, either received from voluntary payments or collected by suits, settlements or compromises, shall be distributed to the creditors of the bank according to their several rights in the same proportion as the amount of a given claim of a creditor bears to the amount of the claims of all creditors, and without regard to the rank or class or character of claims and without diminution, except that the said liquidating officer may deduct from amounts collected, the court costs or attorney's fees and other expenses incurred by him in the prosecution of any action for the collection thereof.

The liquidating officer of a bank shall have the power to decide when the assets of a failed bank are not sufficient to pay the debts, contracts,

engagements and liabilities and he may determine the question of the time when and the court where necessary suits shall be instituted subject to the general provisions of law governing venue and place of trial. For the purposes of this section the term "liquidating officer" shall be held to include every person legally empowered to liquidate the business and affairs of a state bank whether the same be by superintendent of banks, his deputies and agents and also all receivers of state banks now or hereafter qualified to liquidate a state bank under any law of Montana.

En. Sec. 21, Ch. 89, L. 1927.

Payments by stockholders applicable upon double liability, notes, 23 A. L. R. 1367; 45 A. L. R. 1215.

Reorganization, consolidation or merger of bank as affecting liability on stock subscription, note, 45 A. L. R. 1031.

Fraud inducing subscription or purchase of stock as defense against statutory superadded liability, note, 51 A. L. R. 1203.

Insolvency of corporation as barring stockholder's right to rescind subscription for fraud, notes, 41 A. L. R. 674; 46 A. L. R. 484.

6014.22. Transfer of shares of stock. The delivery of a certificate of stock to a bona fide purchaser or pledgee for value, together with a written transfer of the same, or a written power of attorney to sell, assign, and transfer the same, signed by the owner of the certificate, shall be a sufficient delivery to transfer the title as against the creditors of the transferor and subsequent purchasers; but no such transfer shall affect the right of the corporation to pay any dividend due upon the stock, or treat the holder of record as the holder in fact, until such transfer is recorded upon the books of the corporation, or a new certificate issued to the person to whom it has been transferred.

En. Sec. 22, Ch. 89, L. 1927.

Failure to enter transfer of stock on books, as affecting liability of transferor for calls or assessments, note, 45 A. L. R. 137.

Insolvency, fraud or illegality in transfer as affecting liability of transferor of bank stock, note, 45 A. L. R. 99.

Implied obligation of purchaser as to indemnity to vendor of bank stock against future calls or assessments, note, 45 A. L. R. 168.

President's or vice-president's representation as to stock, note, 1 A. L. R. 700.

6014.23. Elections—How conducted. All elections must be by ballot, and every stockholder shall have the right to vote in person or by proxy the number of shares standing in his name for as many persons as there are directors to be elected, or to cumulate said shares and give one candidate as many votes as the number of directors multiplied by the number of his shares of stock shall equal, or to distribute them on the same principle among as many candidates as he shall think fit. The board of directors may prescribe the form and manner of executing proxies. The shares of stock of an estate of a minor, or of a person of unsound mind, may be represented and voted by his guardian, and of a deceased person by his executor or administrator, and every person who shall pledge his stock may nevertheless represent and vote the same at all meetings, unless the pledgor appoints the pledges [pledgee] as a proxy in accordance with the by-laws of the company. The board of directors may provide for the closing of the stock books of the company for such length of time prior to the annual election as may be by it deemed convenient for the making up of the lists of the stockholders. Any regular or called meeting of the

stockholders may adjourn from day to day or from time to time, if for any reason, there is not present a quorum or no election is had, such adjournment and the reasons therefor being recorded in the minutes of said meeting. All elections and other actions at meetings of stockholders or directors shall be conducted in accordance with the laws of the state of Montana governing corporations in general, except as herein otherwise specially provided.

En. Sec. 23, Ch. 89, L. 1927.

6014.24. Investment of capital of savings banks. At least one-half of the paid-in capital of a savings bank, and one-half of the whole amount deposited therein, must be invested in bonds or other securities of the United States, or any of the states of the United States, or any county, city, town or school district of this state, on which interest is regularly payable, or federal land bank bonds or loaned on unencumbered real estate worth at least double the amount to be secured. The remainder may be invested in the aforesaid character of securities, or in approved personal securities, but no loan must be made on personal securities of less than two responsible persons, or collateral security to be approved by the directors, and no loan upon personal security shall be made to any one person or copartnership to an amount exceeding ten thousand dollars. No president, vice-president, director or other officer or servant of a savings bank shall directly or indirectly borrow any of the funds of such bank or of its deposits, or in any manner use the same in his private affairs or business, nor shall any director receive any pay, salary, or emolument until such interest as the directors shall have determined to allow depositors shall have been provided for in accordance with the regulations of the corporation.

The real estate which such corporation may lawfully purchase, hold and convey is:

1. Such as may be necessary for the proper transaction of its business, not exceeding in value fifty thousand dollars.

2. Such as is mortgaged to it in good faith for moneys loaned in pursuance of the provisions of this act, or given as security for money loaned or advanced.

3. Such as is purchased at the sale on judgment or decree obtained or rendered on money so loaned or advanced.

Savings banks organized under the provisions of this act must not purchase, hold, or convey real estate in any other case, or for any other purpose than herein specified, and shall not buy or sell any personal property, except such as may be necessary for the proper transaction of its business, or such as may have been pledged, mortgaged, or assigned to it to secure moneys loaned or advanced; provided, the term "savings bank" as used in this section, shall mean any bank organized to do the business specified in subdivision (b) of section 4 of this act.

En. Sec. 24, Ch. 89, L. 1927.

6014.25. Real estate which banks may purchase, hold or convey. Banks organized under the provisions of this act may purchase, hold, or convey real estate as follows:

1. Such as is necessary for the proper transaction of its business, but it shall not invest an amount exceeding fifty per cent of its paid-up capital and surplus in the lot and building in which the business of the company is carried on, furniture and fixtures, vaults and safety vaults, and boxes necessary or proper to carry on its banking business.

2. Such as is mortgaged to it in good faith by way of security for loans previously made by or moneys due to the corporations.

3. Such as is conveyed to it in satisfaction of debts previously contracted in the course of its business.

4. Such as it purchases at sales under judgments, decrees, or mortgages held by the company.

Real estate acquired in the manner set forth in subdivisions 3 and 4 hereof shall not be held longer than period of five years from the date of acquisition, unless special written permission to do so be granted by the superintendent of banks. Said real estate to be carried on the books of the bank for an amount not greater than the cost thereof to the bank, including costs of foreclosure and other expenses of acquiring title.

En. Sec. 25, Ch. 89, L. 1927.

Power of bank president or vice-president to sell property of bank, note, 1 A. L. R. 707.

Power of national bank to deal with property taken to secure debt, note, 10 A. L. R. 1045.

For text treatment of this subject see vol. 4 Cal. Jur. 174.

6014.26. Trust companies—Dealing in property and investment of capital. Trust and investment companies may lease, purchase, hold, and convey all such real or personal property as may be necessary to carry on their authorized business, as well as such real or personal property as the board of directors may deem necessary to acquire in the enforcement or settlement of any claims or demands arising out of business transactions, and may execute and issue, in the transaction of their business, all necessary receipts, certificates, and contracts. The board of directors of any such corporation is authorized to invest the capital and assets of said corporation, and keep the same invested, in securities to be approved by the said board, and it shall be lawful for the board to make such investments of its capital and assets, and of the funds accumulated by its business, including money, deposits, or any part thereof, in negotiable or non-negotiable notes or bonds, mortgages on unencumbered real estate, stocks and bonds of corporations, or bonds and warrants of any county, city, town or school district of this state, or any other state of the United States, legally authorized to issue the same, or bonds or obligations of the United States.

En. Sec. 26, Ch. 89, L. 1927.

6014.27. Limitation of loan on real estate. No commercial bank shall, except for the purpose of facilitating the sale of property owned by the bank, make any loan on the security of real estate, unless it is a first lien and does not exceed fifty per centum of the market value of the real estate taken as security.

No commercial bank shall loan in the aggregate more than twenty-five per centum of its assets on real estate loans of the character specified in this section, nor shall any such loan be made for a longer time than five years.

These provisions, however, shall not prevent any bank from taking another and immediately subsequent mortgage or deed of trust when it already holds a first mortgage or deed of trust thereon on such real estate, nor from accepting a second lien on real estate to secure the repayment of a debt previously contracted in good faith; nor shall it prevent subsequent liens of any kind from being taken to secure the payment of a debt previously contracted in good faith, when, in the judgment of the directors of such bank, such subsequent liens are necessary further to secure the payment of any debts and save such bank from loss; provided, the term "commercial bank" as used in this section, shall mean a bank organized to do the business specified in section 4 of this act, only.

En. Sec. 27, Ch. 89, L. 1927.

6014.28. Banks empowered to join federal reserve bank. Any bank is hereby authorized and empowered to join or associate itself with the federal reserve bank, or any branch thereof, and nothing herein contained shall prevent or prohibit any bank from joining or associating itself with any such banks or branch thereof, or from investing any part of its capital or surplus in the stock of such bank, in accordance with the terms and provisions of the act of congress creating such association. Any bank joining or associating itself with such bank shall be permitted to conform to and transact its business in accordance with the terms and provisions of the act of congress creating the same, and the rules and regulations of such federal reserve bank.

En. Sec. 28, Ch. 89, L. 1927.

For text treatment of this subject see
vol. 4 Cal. Jur. 124.

Federal reserve banks and bank collections, note, 30 A. L. R. 647.

6014.29. Business prohibited unless under superintendent of banks. No person, firm, company, copartnership, or corporation, either domestic or foreign, not subject to the supervision of the superintendent of banks, and not required by the provisions of this act to report to him, and which has not received a certificate to do a banking business from the superintendent of banks, shall advertise that he or it is receiving or accepting money or savings for deposit, investment, or otherwise, and issuing notes or certificates of deposit therefor, or shall make use of any office sign, at the place where such business is transacted, having thereon any artificial or corporate name, or other words indicating that such place or office is the place or office of a bank or trust company, or that deposits are received there or payments made on check, or any other form of banking business, transacted, nor shall any such person, or persons, firm, company, copartnership, or corporation, domestic or foreign, make use of or circulate any letter-heads, billheads, blank notes, blank receipts, certificates, or circulars, or any written or printed or partly written and partly printed paper, whatever, having thereon any artificial or corporate name of [or] other word or words indicating that such business is the business of a bank, savings bank, or trust or investment company; nor shall any such person, firm, company, copartnership, or corporation, or any agent of a foreign corporation, not having an established place of business in the state, solicit or receive deposits or transact business in the

way or manner of a bank, savings bank, trust or investment company, or in such a way or manner as to lead the public to believe that its business is that of a bank, savings bank, trust, or investment company. Nor shall any person, firm, company, copartnership, or corporation, domestic or foreign, not subject to the supervision of the superintendent of banks, and not required by the provisions of this act to report to him, and which has not received from the superintendent of banks a certificate to do a banking business, hereafter transact business under any name or title which contains the word "bank," "banker," "banking," "savings bank," "saving," "trust," "trustee," "trust company," or "investment company." Any person, firm, company, copartnership, or corporation, domestic or foreign, violating any provision of this section shall forfeit to the state one hundred dollars a day for every day or part thereof during which such violation continues. Upon action brought by the superintendent of banks, the court may issue an injunction restraining any such person, firm, company, copartnership, or corporation from further using such words in violation of the provisions of this section, or from further transacting business in such a way or manner as to lead the public to believe that its business is that of a bank, savings bank, trust, or investment company, during the pendency of such action, and for all time, and may make such other order or decree as equity and justice may require.

En. Sec. 29, Ch. 89, L. 1927.

6014.30. Capital stock to be paid up—Superintendent of banks. Every person, firm, company, copartnership, or corporation, domestic or foreign, advertising that he or it is receiving or accepting money or savings, and issuing notes or certificates of deposit therefor, or advertising that he or it is transacting the business of a bank, savings bank, or trust company, or making the use of any office sign at the place where such business is transacted, having thereon any artificial or corporate name, or other words indicating that such place or office is the place or office of a bank, savings bank, or trust company, or that deposits are received there or payments made on check or that interest is paid on deposits, or that certificates of deposit, either with or without interest, are being issued or that any other form of banking business is transacted, and every person, firm, company, copartnership or corporation, domestic or foreign, making use of or circulating any letter-heads, billheads, blank notes, blank receipts, certificates, or circulars, or any written or printed, or partly written and partly printed paper whatever, having thereon any artificial or corporate name, or advertising that such business is the business of a bank, savings bank, or trust company, must have the proper capital stock paid in and set aside for the purpose of transacting such business, and must have received from the superintendent of banks, as provided for in this act, a certificate to do a banking business. Any person, firm, company, copartnership, or corporation, domestic or foreign, violating any provision of this section shall forfeit to the state one hundred dollars a day for every day or part thereof during which such violation continues. Upon action brought by the superintendent of banks, the court may issue an injunction restraining any such person, firm, company, copartnership, or corporation from further violat-

ing any provision of this section, and may make such further order or decree as equity and justice may require. Every person, firm, company, copartnership, or corporation doing any of the things or transacting any of the business defined in this section, must transact such business according to the provisions of the bank act, and the superintendent of banks or his deputy or examiners, shall have authority to examine the accounts, books, papers, cash, and credits of every such person, firm, company, copartnership, or corporation, domestic or foreign, in order to ascertain whether such person, firm, company, copartnership or corporation has violated or is violating any provisions of this section.

En. Sec. 30, Ch. 89, L. 1927.

6014.31. Foreign corporations. Any corporation organized under the laws of any country or state other than this state, which has complied with all of the laws of this state pertaining to foreign corporations and is not engaged in the business of banking or receiving money on deposit in this state, may lend money in this state, and, for that purpose, may maintain offices in this state, and sue and be sued in this state under its proper corporate name, notwithstanding any prohibitions contained in this act as to the use of any words in the name, sign, or advertising matter of corporations not under the supervision of the superintendent of banks.

En. Sec. 31, Ch. 89, L. 1927.

6014.32. Advertisement of capital must state amount paid in. No bank, or officer thereof, shall advertise in any manner, or publish any statement of the capital authorized or subscribed, unless it or he advertise and publish in connection therewith, the amount of capital actually paid up. No bank shall publish a statement of its resources or liabilities in connection with those of any other bank, unless such statement shall show the resources and liabilities of each bank separately.

En. Sec. 32, Ch. 89, L. 1927.

6014.33. Keeping of book with list of stockholders. Every bank shall keep in its offices, in a place accessible to the stockholders, depositors, and creditors thereof, and for their use, a book containing a list of stockholders in such corporation, and the number of shares of stock held by each.

En. Sec. 33, Ch. 89, L. 1927.

6014.34. Dividends, surplus, losses and bad debts. The directors of any bank may, at certain times and in such manner as its by-laws prescribe, declare and pay dividends to the stockholders of so much of the net undivided profits of the banks as may be appropriated for that purpose, but every bank shall, before declaring any such dividend, carry at least twenty-five per cent of its net earnings for the period covered by the dividend, to its surplus, until such surplus shall amount to fifty per centum of its paid-up capital stock. The whole or any part of such surplus may at any time be converted into paid-in capital and in such event the surplus shall be restored in the manner above provided until it amounts to fifty per cent of the aggregate paid-up capital stock. A

larger surplus may be created and nothing herein contained shall be construed as prohibitory thereof. Provided, however, that no such dividend shall be declared or paid, while there shall remain among the ledger assets of the bank, any item which shall properly be classified as a bad debt.

Under the terms of this section and before any dividend can be paid, all debts due a bank on which the interest is past due and unpaid for a period of twelve months after maturity, unless the same be well secured, or in legal process of collection, and all judgments held by the bank after two years from the date of rendition, exclusive of time consumed in appeal, unless payments have been made, shall be considered bad debts. Such bad debts as hereinbefore defined, shall be charged off the books of such bank before any dividend is declared.

Losses sustained by a bank in excess of its undivided profits, may be charged to and paid from the surplus, in which event such surplus shall be restored in the manner above provided, to the amount required by this act.

En. Sec. 34, Ch. 89, L. 1927.

6014.35. Safe deposit department. Any bank may conduct a safe deposit department, but shall not invest more than one-tenth of its capital and surplus in such safe deposit department. The liability of any bank for the safe keeping and protection of the contents of safety deposit boxes shall be determined by the contract indorsed on the receipt delivered to the renter of said box at the time of the rental, but in any event the obligation of the bank shall be limited to the exercise of ordinary diligence and care to protect the contents of the box from loss or damage by fire, theft or other causes.

En. Sec. 35, Ch. 89, L. 1927.

Acceptance of receptacle as making bank liable as bailee of contents, notes, 1 A. L. R. 272; 18 A. L. R. 87.

Duty and liability of bank as gratuitous bailee in keeping of securities, note, 4 A. L. R. 1216, 1221.

Liability of bank for loss of Liberty bonds, note, 17 A. L. R. 1217.

Liability of bank for loss of Liberty bonds and war savings stamps, note, 31 A. L. R. 703.

Liability of bank for loss of securities or contents of safety deposit boxes, notes, 26 A. L. R. 253, 259; 48 A. L. R. 391.

For text treatment of this subject see vol. 4 Cal. Jur. 181.

6014.36. Purchase or loan of own capital stock prohibited. No bank shall purchase or invest its capital or surplus, or money of its depositors, or any part of either, in shares of its own capital stock; nor loan its capital or surplus, or the money of its depositors, or any part of either, on shares of its own capital stock, unless such purchase or loan shall be necessary to prevent loss to such bank on debts previously contracted in good faith. Every person or corporation violating any provision of this section shall forfeit to the state twice the nominal amount of such stock.

En. Sec. 36, Ch. 89, L. 1927.

Construction and effect of federal statute forbidding national banks to loan on security of, or be purchaser or holder of, its own shares, note, 51 A. L. R. 346.

National bank's power to secure lien

on its stock as affected by forbidding such banks to loan on security of, or be purchaser or holder of, its own shares, note, 51 A. L. R. 348.

For text treatment of this subject see vol. 4 Cal. Jur. 175.

6014.37. Sale of securities by officer to bank. No director, officer, employee, or controlling stockholder of any bank, shall, directly or indirectly, for his own account, for himself, or as the partner or agent of others, sell or transfer, or cause to be sold or transferred, to the bank of which he is a director, officer, employee, or controlling stockholder, any note or bond secured by any mortgage or trust deed on real estate, or any contract arising from the sale of real estate, in which such director, officer, employee, or controlling stockholder is personally or financially interested, without a vote of the majority of the board of such bank, duly noted upon the minutes of the meeting at which such transaction is decided upon, which minutes shall be signed by a majority of the board. Any director, officer, employee, or controlling stockholder of any bank who knowingly violates or consents to the violation of this provision shall be guilty of a felony.

En. Sec. 37, Ch. 89, L. 1927.

6014.38. Limit on amount of bond issue. No commercial bank shall purchase, agree to purchase, or underwrite any bond issue in excess of ten per centum of its assets, except bonds of the United States, of the state of Montana, of the cities, towns, counties, or school districts of this state.

En. Sec. 38, Ch. 89, L. 1927.

6014.39. Disposition of acquired stock. No commercial or savings bank shall purchase or invest its capital or surplus, or money of its depositors, or any part of either, in the capital stock of any corporation, unless the purchase or acquisition of such capital stock shall be necessary to prevent loss to the bank on a debt previously contracted in good faith. Any capital stock so purchased or acquired shall be sold by such bank within six months thereafter, if it can be sold for the amount of the claim of such bank against it; and all capital stock thus purchased or acquired must be sold for the best price obtainable by said bank within one year after such purchase or acquisition. Every person or corporation violating any provision of this section shall forfeit to the state twice the nominal amount of such stock.

En. Sec. 39, Ch. 89, L. 1927.

6014.40. Obtaining property by fraud—False report—Refusal to permit inspection of books. A director, officer, agent, or employee of any bank who

1. Knowingly receives or possesses himself of any of its property, otherwise than in payment for a just demand, and with intent to defraud, omits to make or to cause or direct to be made a full and true entry thereof in its books and account; or,

2. Concurs in omitting to make any material entry thereof; or,

3. Knowingly concurs in making or publishing any written report, exhibit, or statement of its affairs or pecuniary condition, containing any material statement which is false; or,

4. Having the custody or control of its books, wilfully refused or neglects to make any proper entry in the books of such corporation as required by law, or to exhibit, or allow the same to be inspected and

extracts to be taken therefrom by the superintendent of banks, his chief deputy, or any of his examiners, shall be guilty of a felony.

En. Sec. 40, Ch. 89, L. 1927.

6014.41. Overdraft by officer or employee—Receiving personal profit from loan. Any officer, director, agent, teller, clerk or employee of any bank who either,

1. Knowingly overdraws his account with such bank, and thereby obtains the money, notes, or funds of any such bank; or,

2. Asks or receives, or consents or agrees to receive, any commission, any premium on insurance, emolument, gratuity, or reward, or any money, property, or thing of value for his own personal benefit or of personal advantage, for procuring or endeavoring to procure for any person, firm, or corporation any loan from, or the purchase or discount of any paper, note, draft, check, or bill of exchange, by such bank, or for authorizing and permitting any person, firm, or corporation to overdraw any account with such bank, is guilty of a misdemeanor.

En. Sec. 41, Ch. 89, L. 1927.

Using bank's funds for personal ends, notes, 1 A. L. R. 699; 9 A. L. R. 1146.

Misappropriation by bank officer or

employee of funds of third persons and use thereof to cover his own overdraft or defalcation, note, 48 A. L. R. 464.

For text treatment of this subject see vol. 4 Cal. Jur. 164.

6014.42. Waiver of stockholders' liability. No bank shall make any contract with any of its depositors whereby the stockholders' liability provided for by this act is in any manner waived, and if any such contract shall be so made, such contract shall be void.

En. Sec. 42, Ch. 89, L. 1927.

6014.43. Purchase of obligation of bank by officer. No directors, officer, agent or other employee of any bank, shall, directly or indirectly, for his own personal benefit, purchase or sell or be interested in the purchase or sale of any obligation of said bank, or of any of the assets of said bank, for a sum less than shall appear upon the face of the obligation or obligations so purchased or sold. Every person violating the provisions of this section shall, in addition to the general penalties of this act, forfeit to the state twice the nominal amount or face value of such obligations or assets so purchased or sold.

En. Sec. 43, Ch. 89, L. 1927.

Right of bank officer to take his own paper in payment of another's debt to bank, note, 28 A. L. R. 666.

6014.44. Limitations on loans. The total loans to any person, co-partnership or corporation by any bank, including loans to a copartnership, and loans to the several members thereof, shall at no time exceed twenty per centum (20%) of the amount of the unimpaired capital and surplus of such bank. The discount of bills of exchange drawn in good faith against actual existing values, the discount of bankers, acceptances of other banks, the discount of commercial or business paper actually owned by the person negotiating the same, and the obligations of the United States or general obligations of any state or of any political subdivision thereof, or obligation issued under authority of the

Federal Farm Loan Act, shall not be considered as money borrowed, nor shall the foregoing limitations apply to loans made on warehouse receipts and bills of lading, when such warehouse receipts and bills of lading cover nonperishable commodities of the marketable value of at least one hundred twenty per cent (120%) of the amount loaned thereon.

The combined liabilities of the several members of any firm, copartnership or unincorporated association to the loaning bank shall be included in the liabilities of such firm, copartnership or unincorporated association, and the liabilities of such firm, copartnership or unincorporated association shall be included in the liabilities of any member thereof in determining the foregoing limitations.

When in the judgment of the superintendent of banks, the liabilities of any corporation or the combined liabilities of any corporation and one or more of its stockholders to any bank are excessive, he shall require the reduction thereof to such limits and within such time as he shall prescribe.

En. Sec. 44, Ch. 89, L. 1927.

Loaning money for others, note, 33
A. L. R. 597.

Fact that loan by bank was excessive
as a defense, note, 3 A. L. R. 59.

6014.45. Loans to managing officer. No bank shall make a loan to any managing officer of such bank, without taking good collateral or other ample and specific security therefor, and when such loan, or a loan made to a director of such bank, banking institution or trust company, exceeds in amount ten per cent (10%) of its capital stock, it shall not be made until first approved by a majority of the directors of such bank, banking institution or trust company, which said approval shall be entered upon the records of such bank, and the signatures of a majority of the board of directors approving same shall be attached thereto, and be and remain a permanent record of such bank.

En. Sec. 45, Ch. 89, L. 1927.

For text treatment of this subject see vol. 4 Cal. Jur. 283.

6014.46. Calculation of profits. Interest or commissions unpaid, although due or accrued, on debts owing to any bank, shall not be included in calculation of its profits.

En. Sec. 46, Ch. 89, L. 1927.

6014.47. Certified checks. Whenever a check drawn on any bank is certified by any officer or employee of such bank, the amount thereof shall be immediately charged against the account of the person, firm, or corporation drawing the same. It shall be unlawful for any officer or employee of any bank to certify any check drawn upon such bank, unless the person, firm or corporation drawing the check has on deposit with the bank at the time such check is certified, an amount of money subject to the payment of such check, equal to the amount specified in such check. Any officer or employee of any bank who shall wilfully violate the provisions of this section, or shall resort to any device, or receive any fictitious obligation, directly or indirectly, in order to evade the provisions thereof shall have been regularly entered to the credit of the drawer, shall be guilty of felony.

En. Sec. 47, Ch. 89, L. 1927.

Delay in presenting certified check as affecting liability of drawee bank, note, 42 A. L. R. 1138.

Fraudulent alteration of certified check or draft as affecting rights and liabilities of bank, note, 22 A. L. R. 1157.

Garnishment of bank in suit against payee or other holder of a certified check, note, 5 A. L. R. 589.

Right of holder of certified check to preference out of assets of insolvent bank, notes, 21 A. L. R. 680; 51 A. L. R. 1034.

Overcertification of check, note, 2 A. L. R. 86.

Cancellation of certification because of mistake as to drawer's account, note, 29 A. L. R. 140.

For text treatment of this subject see vol. 4 Cal. Jur. 178.

6014.48. Interest not to exceed lawful rate. No bank shall demand or receive for loans or discounts, a rate of interest exceeding that allowed by law, excepting that it shall be lawful for any bank to receive interest in advance according to the ordinary usages of banking institutions.

En. Sec. 48, Ch. 89, L. 1927.

6014.49. Joint deposits—Survivorship. When a deposit has been made, or shall hereafter be made, in any bank, in the names of two (2) persons, payable to either, or payable to either or the survivor, such deposit, or any part thereof, or any interest or dividend thereon, may be paid to either of said persons, whether the other be living or not; and the receipt or acquittance of the person so paid shall be a valid and sufficient release or discharge to the bank for any payment so made.

En. Sec. 49, Ch. 89, L. 1927.

6014.50. Trust deposits—Payment. Whenever any deposit shall be made in any bank by any person in trust for another, and no other or further notice of the existence and terms of a legal and valid trust shall have been given in writing to the bank, in the event of the death of the trustee, the same, or any part thereof, together with the interest or dividends thereon, may be paid to the person for whom said deposit was made.

En. Sec. 50, Ch. 89, L. 1927.

Trust in respect of funds deposited by executors, administrators, testamentary trustees or guardians, note, 37 A. L. R. 120.

Trust or preference in respect of money deposited for transmission by bank, note, 16 A. L. R. 195.

Trust or preference in respect of money placed in bank for purpose of transaction with third person, note, 31 A. L. R. 472.

Trust or preference in respect of money used to purchase exchange or to be transmitted, note, 16 A. L. R. 190.

What property may be the subject of

special deposit in bank, note, 50 A. L. R. 247.

Payment of deposit directly to beneficiary without order of trustee or fiduciary in whose name it was made, note, 2 A. L. R. 1557.

Transfer of bank deposits from trust to private account where there is an antecedent debt of the trustee, note, 12 A. L. R. 1053.

Deposit in trust for another as transfer to take effect at or after death within meaning of succession tax law, note, 49 A. L. R. 897.

For text treatment of this subject see vol. 4 Cal. Jur. 189.

6014.51. Deposit by minor. Whenever any deposit shall be made in any bank, and by and in the name of any minor, the same shall be held for the exclusive right and benefit of such minor, and free from the control or lien of all persons whatsoever, except creditors, and shall be

paid, with any interest due thereon, to the person in whose name the deposit shall have been made, and the receipt of such minor shall be a sufficient release or discharge for such deposit to the bank.

En. Sec. 51, Ch. 89, L. 1927.

6014.52. Demand or time deposits. Demand deposits, within the meaning of this act, shall comprise all deposits payable within thirty (30) days, and time deposits shall comprise all deposits payable after thirty (30) days, and all savings accounts and certificates of deposit which are subject to not less than thirty (30) days' notice before payment.

En. Sec. 52, Ch. 89, L. 1927.

Bank deposit for purpose of meeting certain checks or classes of checks, notes, 24 A. L. R. 1111; 39 A. L. R. 1138.

Effect of verbal order with respect to payment of check or transfer of bank deposit, note, 2 A. L. R. 175.

Examination of account, pass-book or canceled checks by bank depositor, notes, 15 A. L. R. 159; 28 A. L. R. 1435.

Rules printed in pass-book as affecting rights of bank and depositor, note, 5 A. L. R. 1203.

Negotiability of certificate of deposit, note, 36 A. L. R. 1358.

Status of Christmas club deposits, note, 21 A. L. R. 1128.

Liability for deposit received out of banking hours, note, 15 A. L. R. 429.

Liability for dishonoring check, notes, 4 A. L. R. 947; 13 A. L. R. 305; 34 A. L. R. 205.

Duty of bank when several checks which in the aggregate exceed the depositor's balance are presented at the same time, note, 26 A. L. R. 1486.

Application on debt due bank of deposit made for purpose of meeting certain checks or classes of checks, note, 24 A. L. R. 111; 39 A. L. R. 1138.

Application upon debt due bank of deposits made by debtor in his own name of funds of a third person, note, 13 A. L. R. 324.

Duty of bank to one primarily liable to apply his deposit to an indebtedness owing from him to the bank, note, 9 A. L. R. 181.

Duty of bank to prior parties to the paper to apply deposit to credit of indorser on paper owned by bank, note, 37 A. L. R. 578.

Right of bank to apply upon debt deposits made by debtor in his own name of funds of a third person, note, 31 A. L. R. 756.

Right of bank to set off immature claim against insolvent depositor, note, 43 A. L. R. 1328.

Right to recover amount of overdraft from depositor, note, 12 A. L. R. 360.

Charging back check drawn on bank itself, which it has credited to a depositor under mistaken belief that the drawer's account is good, note, 15 A. L. R. 709.

Credit by bank to a depositor of a check drawn upon itself under the mistaken belief that the drawer's account is good, as a payment of the check preventing the bank from charging it back, note, 15 A. L. R. 709.

Title to commercial paper deposited by the customer of a bank to his account, notes, 11 A. L. R. 1043; 16 A. L. R. 1084; 42 A. L. R. 492.

Title to commercial paper deposited for collection, note, 42 A. L. R. 492.

Constitutionality of statutes relating to disposition of old bank deposits, notes, 1 A. L. R. 1054; 31 A. L. R. 398.

Contract to pay officer or employee of bank to disclose the existence of, or to assist one to establish, a deposit, note, 18 A. L. R. 975.

For text treatment of this subject see vol. 4 Cal. Jur. 185.

6014.53. Reserve requirements. Every bank, except a reserve bank, shall maintain at all times a reserve of at least ten per centum (10%) of its deposit liabilities, of which reserve such portion as the board of directors may determine may be on deposit in banks approved by the superintendent of banks as reserve banks. A bank approved by the superintendent of banks as a reserve bank must at all times maintain a reserve of at least fifteen per centum (15%) of its deposit liabilities, of which such portion as the board of directors may determine, may be on deposit in banks approved by the superintendent of banks as reserve banks. Any solvent bank of good repute having a full paid-up capital

and surplus of one hundred thousand dollars (\$100,000), doing business in the state of Montana, or any of the states of the United States may be designated by the superintendent of banks as a reserve agent for Montana state banking institutions. Such approval or designation may be withdrawn or withheld at any time by the superintendent of banks for cause, provided that the provisions of this act as to the capital and surplus shall not apply to any bank in Montana heretofore designated by the superintendent of banks as a reserve bank. Whenever the reserve of any bank shall fall below the amount required herein to be kept, such bank shall not increase its loans or discounts otherwise than by discounting or purchasing bills of exchange payable at sight or on demand, and the superintendent of banks shall notify any bank whose reserve may be below the amount herein required, to make good such reserve. In arriving at deposit liabilities with regard to bank deposits, the net balance of amounts due to and from other banks shall be taken as the basis for ascertaining the deposit liability to banks against which reserves shall be carried, provided, a compliance with the federal reserve banking laws, rules and regulations by member banks shall be held to be a compliance with the reserve requirements and conditions of this act.

En. Sec. 53, Ch. 89, L. 1927.

6014.54. Borrowed money. No bank shall at any time become indebted either directly or indirectly for borrowed money or rediscounts in an amount in excess of its paid-up capital and surplus, without first obtaining written authority from the superintendent of banks, provided, that debentures or certificates of indebtedness issued by any investment company to run for a period of three (3) years or more, shall not be included in the deposit liabilities of said investment company, as effected by the provisions of this section, and entitle such federal reserve member banks to the rights and privileges accruing from a compliance with this act.

En. Sec. 54, Ch. 89, L. 1927.

6014.55. State banking department. The state banking department of the state of Montana shall be maintained as in this act provided. The state examiner of the state of Montana shall be ex-officio superintendent of banks. Said state examiner and ex-officio superintendent of banks, hereinafter called the superintendent of banks, or for brevity the superintendent, shall be appointed by the governor and the appointment must be submitted to and confirmed by the senate of the state of Montana. The state examiner and superintendent of banks shall have been a resident of the state of Montana for three (3) years and shall have had at least five (5) years' banking experience in an executive capacity or as an examiner of banks, and active in either of these capacities up to within two (2) years of his appointment.

En. Sec. 55, Ch. 89, L. 1927.

6014.56. State superintendent of banks—Bond. The term of office of the superintendent of banks shall be four (4) years from and after his appointment, and it shall be his duty to execute all laws in relation

to banks, acting personally or through his examiners, regular or special. He shall file a bond as superintendent of banks in a penal sum of twenty-five thousand dollars (\$25,000) with a surety or sureties to be approved by the governor, conditioned upon the faithful performance of the duties of his office as superintendent of banks.

En. Sec. 56, Ch. 89, L. 1927.

6014.57. State superintendent of banks—Employees. The superintendent of banks shall have the power and authority with the approval of the governor to appoint such clerks and examiners, both regular and special, one of whom may be designated chief examiner, as may be necessary for the proper transaction of the business of the department. The examiners shall qualify by taking the oath of office required of other state officers and giving a bond in the sum of ten thousand dollars (\$10,000), to be approved by the governor, conditioned upon the faithful discharge of the duties of state bank examiners, and be commissioned by the superintendent of banks as such examiners.

En. Sec. 57, Ch. 89, L. 1927.

6014.58. Superintendent of banks and employees not to be interested in banks. Neither the superintendent of banks nor any bank examiner shall be interested in or a borrower from any state bank, directly or indirectly.

En. Sec. 58, Ch. 89, L. 1927.

6014.59. Superintendent of banks—Salary. The superintendent of banks shall receive a salary of five thousand four hundred dollars (\$5,400) per annum, payable monthly. The salaries of all clerks and bank examiners appointed by the superintendent of banks, shall be fixed by the superintendent of banks, subject to the approval of the governor.

En. Sec. 59, Ch. 89, L. 1927.

6014.60. Payment of expenses of superintendent. The necessary traveling and living expenses of the superintendent of banks and the members of his staff incurred in the discharge of their duties when away from headquarters shall be borne by the state of Montana, and paid for from the appropriation made for the maintenance of the department. The superintendent of banks is authorized to attend the Montana bankers' association, and shall be entitled to receive from the state of Montana his necessary traveling and living expenses incurred in such attendance.

En. Sec. 60, Ch. 89, L. 1927.

6014.61. Report to superintendent of banks. Every bank shall make to the superintendent of banks regular call reports according to the form which may be prescribed by him, verified by oath or affirmation of the president, vice-president or cashier of such bank and attested by the signature of at least two (2) of the directors other than the subscribing officer. Each such report shall exhibit in detail, and under appropriate schedules, the resources and liabilities of the bank at the close of business on any past day by him specified; and shall be transmitted to the superintendent of banks within five (5) days after the

receipt of a request or requisition therefor from him, and in such form as may be required by the superintendent of banks, it shall be published as soon as possible in a newspaper published in the place where such bank is established, or, if there be no newspaper in the place, then in one published nearest thereto in the same county, at the expense of the bank; and such proof of the publication shall be furnished at such times and in such manner as may be required by the superintendent of banks.

En. Sec. 61, Ch. 89, L. 1927.

6014.62. Report of declaration of dividend. In addition to the statement required by the preceding section, every such bank shall report to the superintendent of banks within ten (10) days after declaring any dividend, showing the amount of such dividend and the amount of net earnings in excess of the dividend. Such statement shall be attested as provided for in the attestation of statement by the preceding section.

En. Sec. 62, Ch. 89, L. 1927.

6014.63. Special reports to superintendent of banks. In addition to the information obtained from the report required by the provisions of section 61 of this code, the superintendent of banks shall also have the power to require any bank to furnish a special report in writing, verified as required by section 61 of this code, whenever in his judgment such special report is necessary to inform him fully of the actual financial condition and affairs of such bank. Any wilful false statement in the premises shall be perjury, and shall be punished as such.

En. Sec. 63, Ch. 89, L. 1927.

6014.64. Superintendent to call for reports. The superintendent of banks shall call for the reports specified in section 61 of this code at least three (3) times each year. The "past day specified" by the superintendent of banks, under the provisions of said section, shall be on the day designated by the comptroller of currency of the United States for reports of national banking associations.

En. Sec. 64, Ch. 89, L. 1927.

6014.65. Reports confidential—False reports—Penalties for the violation thereof. The report and any information contained in the reports and statements hereinabove provided for, other than such reports as are required to be published, shall be deemed to be secret and for the confidential information of the superintendent of banks only, and such information shall not be imparted to any persons who are not officially associated in and with the office of the superintendent of banks, and the information therein contained shall be used by the superintendent of banks only in the furtherance of his official duties, except that it shall be lawful for the department to exchange information with the federal banking department and with departments of other states and to furnish information to prosecuting officials who request the same for use in pursuit of official duties. Any superintendent of banks or deputy assistant, examiner, or clerk in his employ, who violates any of the provisions of this section, or wilfully makes a false official report as to the condition of any bank, shall be removed from office, and shall also be deemed

guilty of a felony, and upon conviction thereof shall be punished by a fine of not exceeding one thousand dollars (\$1,000), or by imprisonment in the state penitentiary for not exceeding five (5) years, or by both such fine and imprisonment.

En. Sec. 65, Ch. 89, L. 1927.

6014.66. Penalty for failure to make report within five days. If any bank neglects to make out or transmit the statements required by this act, within five (5) days after call, it shall be subject to a penalty of twenty dollars (\$20) for each day in default after the periods respectively required by this act that it may delay to make and transmit any such statements. Should any bank delay for a period of one (1) month to make out and transmit the statements and proofs of publication required by this act, beyond the period when the same is required to be made, or wilfully violate any of the provisions of this act with reference to said statements and reports, the directors shall be personally responsible for all the debts of such corporation contracted previous to and during the period of such neglect.

En. Sec. 66, Ch. 89, L. 1927.

6014.67. False statements and entries deemed felony. Every officer or other person authorized by this act, who wilfully and knowingly makes any false statement of facts, statement of account, or report, and every officer, agent, or clerk of any bank who wilfully and knowingly makes any false entries in the books of such bank, or knowingly subscribes or exhibits false papers, with the intent to deceive any person authorized to examine such bank, and every person authorized by the provisions of this act to make statements or reports, who wilfully and knowingly subscribes or makes any false statement or report, shall be deemed guilty of a felony, and, upon conviction thereof, shall be imprisoned at hard labor in the state prison for a term of not less than one (1) nor more than ten (10) years.

En. Sec. 67, Ch. 89, L. 1927.

6014.68. Assessment on capital stock to make good impairment. Whenever the superintendent of banks shall determine that an impairment of capital exists in any bank, he may in his discretion notify the board of directors of such bank by written notice that such impairment exists, stating the amount thereof in dollars and percentage of the capital stock thereof, and he may if he deems it advisable, order such board to make good such impairment within ninety (90) days from date of such notice.

The board of directors shall, upon receipt of notice, convene and pass a resolution reciting the receipt of such notice of impairment and calling a special meeting of the stockholders of the bank for a day certain in the manner provided in their by-laws.

The stockholders, when assembled as herein provided, shall pass a resolution reciting the facts of receipt of notice from the superintendent, notice of impairment and notice of meeting, and assessing themselves by assessing the stock of record, payment of which assessment must be

made within the time limit specified by the superintendent of banks as provided in notice of impairment.

If there be any stock remaining on which the assessment is not paid as hereinabove provided, the same or such part thereof as is necessary to pay the assessment shall be sold by the board of directors, acting through the cashier or secretary thereof, at public or private sale, as appears best for all concerned, on a day certain, not less than thirty (30) days after the day fixed for payment of assessment hereinabove provided, notice of time and place of which sale shall be given by registered mail to the stockholders by the board through its cashier or secretary at least ten (10) days prior to the date thereof, and such sales of stock as herein provided for shall effect an absolute cancellation of the outstanding certificate or certificates evidencing the stock so sold, and shall make the same null and void in the hands of the stockholders, his assigns or pledgees, and a new certificate shall be issued by the bank to the purchaser thereof, for the number of shares purchased, and a new certificate issued to the stockholder of record and delivered to him or any pledgee or assignee thereof for the remaining shares, if any, and the record of the original certificate sold shall be marked canceled on the books of the bank and such record thereof shall be prima facie evidence of the regularity of the proceedings for the sale of said stock.

If any bank fails to make good its capital impairment upon demand of the superintendent of banks, as provided herein, the superintendent of banks may forthwith take charge of such bank and proceed to liquidate it as in case of insolvency.

If the said stock does not sell for sufficient to pay the assessment thereon, the board of directors may proceed by suit in the name of the corporation to collect the deficiency from the record holder, whose stock has been thus sold for the assessment.

En. Sec. 68, Ch. 89, L. 1927.

6014.69. Penalty for receiving deposits when insolvent, or making false statements. Any officer, agent, or clerk of any bank, knowing such bank to be insolvent, who receives money, bank bills, notes of the United States, or currency, or other bills or drafts circulating as money or currency, except in the manner set forth in the succeeding section, or who subscribes or makes any false statements or entries in the books of such bank, or knowingly subscribes or exhibits any false paper with the intent to deceive any person authorized to examine as to the condition of such bank, or wilfully subscribes or makes false reports, shall be subject to imprisonment at hard labor in the state prison for a term not exceeding five (5) years.

En. Sec. 69, Ch. 89, L. 1927.

6014.70. Deposits in insolvent bank. Whenever any bank shall be insolvent in the manner described and set forth in this act, such bank shall not accept or receive on deposit any money, bank bills, or notes, United States treasury notes or currency, or other notes, bills or drafts circulating as money or currency, or transact any other business in (a) connection with its operations, except as trustee for the depositors and parties transacting business with them, and it or they shall keep all such

deposits of money, bills or notes, or United States treasury notes or currency, or other notes, bills, or drafts circulating as money or currency, separate and apart from the general assets of the bank, from and after the date of the accrual of such insolvency, and when such impairment or insolvency has been made good, such deposits received in trust may be transferred to the general assets of the bank on and by written consent of the superintendent of banks; provided, that in the event such insolvency be not made good then any and all such trust deposits shall be returned to the depositors making them; provided, further, that any officer, director, cashier, manager, member, partner or managing partner thereof, who shall knowingly accept or receive, be accessory to or permit or connive at the receiving or accepting of such trust deposits, except in the manner hereinbefore set forth in this section, shall be deemed guilty of a felony, and upon conviction thereof, shall be punished by a fine not exceeding ten thousand dollars (\$10,000), or imprisonment in the state prison not exceeding five (5) years, or by both fine and imprisonment as aforesaid.

En. Sec. 70, Ch. 89, L. 1927.

A. L. R. 1206; 25 A. L. R. 728; 37 A. L. R. 620.

Rights of owners to payment of securities deposited in bank, out of guaranty fund, on its insolvency, note, 51 A. L. R. 920.

Receipt of deposit after banking hours as affecting right of depositor to reclaim it on bank's insolvency, note, 15 A. L. R. 429.

Rescission of deposit or trust in respect thereof because of insolvency of bank when it was made, notes, 20

For text treatment of this subject see vol. 4 Cal. Jur. 205.

6014.71. Examination and supervision. The superintendent of banks shall exercise a constant supervision, either personal or through the examiners herein provided for, over the books and affairs of all banks doing business within the state of Montana; and shall, through the examiners, visit, at least once a year, each of said banks, and verify the assets and liabilities of each, and so far investigate the character and value of the assets of each as to ascertain with reasonable certainty that the values are correctly carried on the books. He shall further investigate the methods of operation and conduct of business of said banks and their systems of accounting, to ascertain whether such methods and systems are in accordance with law and sound banking principles. He may examine, or cause to be examined by the examiners, on oath, any of the officers, directors, agents, clerks, customers, or depositors of any bank touching the affairs and business thereof, and may, in the performance of his official duties, issue, or cause to be issued by himself or the examiners subpoenas, and administer, or cause to be administered by the examiners, oaths; provided, that in case of any refusal to obey any subpoena issued by him or under his direction, such refusal may at once be reported to the district court of the district in which the bank is located, and such court shall enforce obedience to such subpoena in the manner provided by law for enforcing obedience to the process of said court. In all matters relating to his official duties, the superintendent of banks shall have the same power possessed by courts of law to issue subpoenas, and cause them to be served and enforced, and all officers, directors, agents and employees of banks doing business under the provisions of this act, and all persons

having dealings with or knowledge of the affairs or methods of any such institution, shall at all times afford reasonable facilities for such examinations, and make such returns and reports to the superintendent of banks as he may require; attend and answer under oath his lawful inquiries produce and exhibit such books, accounts, documents and property as he may desire to inspect, and in all things aid him in the performance of his duty.

En. Sec. 71, Ch. 89, L. 1927.

charter rights, note, 8 A. L. R. 898.

Examination and supervision of banks
by public officers as impairment of

For text treatment of this subject see
vol. 4 Cal. Jur. 112.

6014.72. Reports and records of superintendent. The superintendent of banks shall keep all proper records and files pertaining to the duties and work of his office, and shall report to the governor annually touching all of his official acts, giving abstract of statistics and the condition of affairs of all banks to which his duties relate, and make such recommendations and suggestions as he may deem proper, which report may be printed and bound in a satisfactory and substantial manner, and distributed among the banks doing business under the provisions of this act.

En. Sec. 72, Ch. 89, L. 1927.

6014.73. State examiner's fund. For the purpose of a just distribution of the expense incurred by the department of the state examiner, there is hereby created a fund to be designated as the "state examiner's fund," and all moneys collected under the provisions of this section shall be credited to said fund, except as otherwise provided herein.

Counties. For the credit of such fund, each county of the state, shall pay to the state treasurer on or before the first day of July of each year, according to its taxable valuation for the preceding year as follows:

Counties having a taxable valuation of five million dollars (\$5,000,000) or less, one hundred and seventy-five dollars (\$175).

Counties having a taxable valuation of from five million dollars (\$5,000,000) to seven million dollars (\$7,000,000), two hundred and twenty-five dollars (\$225).

Counties having a taxable valuation of from seven million dollars (\$7,000,000) to ten million dollars (\$10,000,000), two hundred and fifty dollars (\$250).

Counties having a taxable valuation of from ten million dollars (\$10,000,000) to fifteen million dollars (\$15,000,000), three hundred dollars (\$300).

Counties having a taxable valuation of from fifteen million dollars (\$15,000,000) to twenty million dollars (\$20,000,000), three hundred and fifty dollars (\$350).

Counties having a taxable valuation of from twenty million dollars (\$20,000,000) to thirty million dollars (\$30,000,000), four hundred and fifty dollars (\$450).

Counties having a taxable valuation of from thirty million dollars (\$30,000,000) to forty million dollars (\$40,000,000), six hundred dollars (\$600).

Counties having a taxable valuation of more than forty million dollars (\$40,000,000), seven hundred and fifty dollars (\$750).

All consolidated county and city governments having a taxable valuation of from thirty million dollars (\$30,000,000) to forty million (\$40,000,000) eight hundred dollars (\$800).

All consolidated county and city governments having a taxable valuation of more than forty million dollars (\$40,000,000), one thousand dollars (\$1,000).

Cities and towns. For the credit of such fund, each city and town of the state, shall pay to the state treasurer, on or before the first day of July of each year, according to its taxable valuation for the preceding year, as follows:

Cities and towns having a taxable valuation of two hundred thousand dollars (\$200,000) or less, twenty-five dollars (\$25).

Cities and towns having a taxable valuation of from two hundred thousand dollars (\$200,000) to five hundred thousand dollars (\$500,000), fifty dollars (\$50).

Cities and towns having a taxable valuation of from five hundred thousand dollars (\$500,000) to seven hundred and fifty thousand dollars (\$750,000), seventy-five dollars (\$75).

Cities and towns having a taxable valuation of from seven hundred and fifty thousand dollars (\$750,000) to one million dollars (\$1,000,000), one hundred dollars (\$100).

Cities and towns having a taxable valuation of from one million dollars (\$1,000,000) to two million five hundred thousand dollars (\$2,500,000), one hundred fifty dollars (\$150).

Cities and towns having a taxable valuation of from two million five hundred thousand dollars (\$2,500,000) to five million dollars (\$5,000,000), two hundred dollars (\$200).

Cities and towns having a taxable valuation of from five million dollars (\$5,000,000) to ten million dollars (\$10,000,000), two hundred fifty dollars (\$250).

Cities and towns having a taxable valuation of more than ten million dollars (\$10,000,000), three hundred dollars (\$300).

Free county high schools. For the credit of said fund, each free county high school shall pay to the state treasurer on or before the first day of July of each year, a fee in the amount of twenty-five dollars (\$25).

Irrigation districts. For the credit of said fund, each irrigation district under the supervision of the state examiner, shall pay to the state treasurer on or before the first day of July of each year, the following amounts:

Districts whose existing or proposed obligations are in excess of two hundred and fifty thousand dollars (\$250,000), fifty dollars (\$50).

Districts whose existing or proposed obligations are less than two hundred and fifty thousand dollars (\$250,000), twenty-five dollars (\$25).

Banks and trust companies. For the credit of said fund, each bank, trust company or investment company, under the supervision of the superintendent of banks, shall pay to the state treasurer, on or before the first day of July of each year, a fee according to the following rates:

All banks, incorporated or unincorporated, having capital stock of

twenty-five thousand dollars (\$25,000) or under, shall pay one hundred dollars (\$100).

Those having capital stock of over twenty-five thousand dollars (\$25,000) and up to and including fifty thousand dollars (\$50,000), shall pay one hundred twenty-five dollars (\$125).

Those having capital stock of over fifty thousand dollars (\$50,000) and up to and including seventy-five thousand dollars (\$75,000) shall pay one hundred fifty dollars (\$150).

Those having capital stock of over seventy-five thousand dollars (\$75,000) and up to and including one hundred thousand dollars (\$100,000), shall pay two hundred dollars (\$200).

Those having capital stock of over one hundred thousand dollars (\$100,000) and up to and including three hundred thousand dollars (\$300,000), shall pay three hundred dollars (\$300).

Those having capital stock over three hundred thousand dollars (\$300,000), shall pay three hundred fifty dollars (\$350).

Building and loan associations. For the credit of said fund, each building and loan association under the supervision of the superintendent of banks, shall pay to the state treasurer, on or before the first day of July of each year, a fee based upon the total assets of such association as shown by its last annual statement and upon the following rates:

All building and loan associations having total assets in the amount of fifty thousand dollars (\$50,000), or less, shall pay a fee in the amount of thirty-five dollars (\$35).

Those having total assets in the amount of fifty thousand dollars (\$50,000) and less than two hundred thousand dollars (\$200,000), shall pay a fee of seventy-five dollars (\$75).

Those having total assets in the amount of two hundred thousand dollars (\$200,000) and less than five hundred thousand dollars (\$500,000), shall pay a fee of one hundred dollars (\$100).

Those having total assets in the amount of five hundred thousand dollars (\$500,000) and less than one million dollars (\$1,000,000), shall pay a fee of one hundred fifty dollars (\$150).

Those having total assets in the amount of one million dollars (\$1,000,000) and less than one million five hundred thousand dollars (\$1,500,000), shall pay a fee of two hundred dollars (\$200).

Those having total assets in the amount of one million five hundred thousand dollars (\$1,500,000) and less than two million dollars (\$2,000,000), shall pay a fee of two hundred fifty dollars (\$250).

Those having total assets in the amount of two million dollars (\$2,000,000) and less than three million dollars (\$3,000,000), shall pay a fee of three hundred dollars (\$300).

Those having total assets in the amount of three million dollars (\$3,000,000) and less than four million dollars (\$4,000,000), shall pay a fee of four hundred dollars (\$400).

Those having total assets in the amount of four million dollars (\$4,000,000) and less than five million dollars (\$5,000,000), shall pay a fee of five hundred dollars (\$500).

Those having total assets in the amount of five million dollars (\$5,000,000) and less than six million dollars (\$6,000,000), shall pay a fee of seven hundred dollars (\$700).

Those having total assets in the amount of six million dollars (\$6,000,000) or more, shall pay a fee of eight hundred dollars (\$800).

Provided further, that all building and loan associations incorporated under the laws of other states, and doing business in the state of Montana under the supervision of the superintendent of banks, in addition to the regular fee as above set forth, shall pay to the examiners making such examination, their necessary traveling expenses including transportation and subsistence.

Special examinations may be made of any county, city, town, school district, irrigation district, high school, bank, building and loan association or any other office, board or commission, whether temporary or permanent, however created, and for whatever purpose, having the control management, collection or disbursement of any public money of any character or description, when in the judgment of the state examiner it shall be deemed necessary, and such special examinations shall be charged for at the rate of fifteen dollars (\$15) per day for each examiner employed for the time actually consumed, together with necessary transportation. All fees or charges so collected by the superintendent of banks and paid to the state treasurer, shall be credited to the state examiner's departmental appropriation for the current year by the state auditor.

In any case where the current examination shall not have been made prior to the first day of July of any year, the above fees must be paid as herein specified, provided, however, that all examinations shall cover the entire period from the date of the last examination.

En. Sec. 73, Ch. 89, L. 1927.

6014.74. Acceptance and issuance drafts and letters of credit. Every bank organized and existing under the laws of Montana, shall have power and authority to accept for payment at a future date, drafts drawn upon it, by its customers, and to issue letters of credit, authorizing holders thereof to draw drafts upon it, if its correspondents at sight or on time not exceeding one (1) year, provided that the total amount of drafts so accepted or letters of credit so issued for any one person, firm or corporation, shall not at any one time exceed twenty per cent (20%) of the capital and surplus of the accepting or issuing bank.

En. Sec. 74, Ch. 89, L. 1927.

Making commercial paper, note, 1 A. L. R. 693.

What constitutes a letter of credit, note, 30 A. L. R. 1310.

Quality or condition of goods for pur-

chase price of which it is issued as affecting liability of bank on letter of credit, note, 39 A. L. R. 755.

Duty and liability of bank under agreement to remit money or establish credit, note, 45 A. L. R. 1052.

6014.75. Change from state to national bank. Any bank may become a corporation for the purpose of carrying on the business of banking within this state, pursuant to the provisions of the act of congress "to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," approved June 3, 1864, and of title 52 of the Revised Statutes of the United States, whenever stockholders owning two-thirds ($\frac{2}{3}$) of the stock of such bank shall have voted to become such corporation, or have executed a written consent authorizing its directors to make the certificate required

therefor by the laws of the United States, or whenever a majority of the directors of such bank, having been authorized in their discretion to make the change, shall, by a vote of such majority, decide to become such corporation; and the cashier of such bank shall publish notice thereof for thirty (30) days in such newspaper as the directors may select, and send a like printed notice by mail or otherwise to all nonvoting or dissenting stockholders, and notify the state bank examiner of this state that such bank has decided to become a corporation under the laws of the United States.

En. Sec. 75, Ch. 89, L. 1927.

Liability of state bank becoming a national bank, or vice versa, for debts of predecessor, note, 15 A. L. R. 1133.

Liability for debts of predecessor of state bank, becoming a national bank, or vice versa, note, 39 A. L. R. 145.

Power of national bank to deal with property taken to secure debt, note, 10 A. L. R. 1045.

Power of national bank to enter into partnership in other business, note, 37 A. L. R. 1109.

For text treatment of this subject see vol. 4 Cal. Jur. 125.

6014.76. Surrender of charter by state bank. Any such bank, which will become a corporation for carrying on the business of banking under the laws of the United States, shall cease to be a corporation under the laws of this state, except that for the term of three (3) years thereafter its corporate existence shall be deemed to continue for the purposes of prosecuting and defending suits by and against it, and of enabling it to close its concerns, and to dispose of and convey its property. The members of the board of directors last in office, when such corporation shall have become a corporation under the laws of the United States, shall continue to be the board of directors of the corporation, with power to take all necessary measures to carry out and perfect such organization, by signing the articles of association and the organization certificate, and adopting such regulations as may be just and proper and not inconsistent with the acts of congress in relation thereto. Such change from a state to a national bank corporation shall not release any such bank from its obligations to pay and discharge all the liabilities created by law or incurred by it before becoming a national bank corporation, or any tax imposed by the laws of this state up to the date of its becoming such national bank corporation, in proportion to the time which has elapsed since the next preceding payment thereof.

En. Sec. 76, Ch. 89, L. 1927.

6014.77. Reduction of capital stock. The directors of such new corporation may reduce the capital stock of the bank to its par value by dividing the surplus among its stockholders, or may retain such portion of such surplus as they may deem necessary; and in case of an increase of the capital stock under the provisions of the acts of congress, may charge the shares of such increased capital stock with a like amount, to place the whole of such capital stock on an equality; and may award such new stock, or such proportion or fractional parts thereof, to such persons as they shall determine are entitled thereto, and as are provided in their articles of association and in the acts of congress; but new directors may be chosen at such time and in the manner provided in the articles of association and the acts of congress.

En. Sec. 77, Ch. 89, L. 1927.

6014.78. Certificate of change to national bank. When any such bank has decided to become a corporation under the laws of the United States, the directors shall immediately thereafter execute and transmit to the comptroller of the currency the proper certificate and other instruments for its conversion into a national bank corporation under the laws of the United States. When any such bank shall have become authorized to commence the business of banking under the laws of the United States, all the property of such bank shall immediately, by act of law, and without any conveyance or transfer, be vested in and become the property of the national bank corporation, into which such bank shall have been converted.

En. Sec. 78, Ch. 89, L. 1927.

6014.79. Reorganization of national banks as state bank. Any national bank authorized to dissolve, and which shall have taken the necessary steps to effect dissolution, may reorganize as a state bank upon the consent in writing of the owners of two-thirds of the capital stock of such bank, and with the approval of the state superintendent of banks. The stockholders shall make, execute, and acknowledge articles of incorporation as required by the laws of the state of Montana, and shall set forth therein the said written consent of such stockholders. Upon the filing of said articles as provided by law, and upon the approval of the superintendent of banks, such bank shall be deemed to be recognized under this act, and thereupon all assets, real and personal, of such dissolved national bank shall be vested in and become the property of such reorganized state bank, subject to all liabilities of such national bank not liquidated before such reorganization.

En. Sec. 79, Ch. 89, L. 1927.

6014.80. Liability of bank paying forged check. No bank shall be liable to a depositor for the payment by it of a forged or raised check unless, within thirty days after the receipt by the depositor of the voucher of such payment, such depositor shall notify the bank that the check so paid is forged or raised.

En. Sec. 80, Ch. 89, L. 1927.

Duty of depositor to report loss or theft of unsigned check, note, 26 A. L. R. 613.

Bank's right to recover amount paid on check so drawn as to be easily alterable as to amount, note, 22 A. L. R. 1140.

Liability of party to commercial paper so drawn as to be easily alterable as to amount, notes, 22 A. L. R. 1139; 36 A. L. R. 327.

Owner's rights against bank who cashes check on forged or unauthorized in-

dorsement and procures its payment by drawee, note, 31 A. L. R. 1068.

Previous holder of check paid by bank as entitled to take advantage of depositor's failure to examine vouchers in order to discover forgeries, note, 17 A. L. R. 956.

Right of drawee of forged check or draft to recover amount paid thereon, note, 12 A. L. R. 1089.

Right of drawee bank to charge back credit given on a forged check, note, 5 A. L. R. 1566.

For text treatment of this subject see vol. 4 Cal. Jur. 215.

6014.81. Presentation checks—Time for. Where a check or other instrument payable on demand at any bank or trust company doing business in this state is presented for payment more than six months after its date, such bank or trust company may, unless expressly instructed

by the drawer or maker to pay the same, refuse payment thereof and no liability shall thereby be incurred to the drawer or maker for dishonoring the instrument by nonpayment.

En. Sec. 81, Ch. 89, L. 1927.

is payable, during delay in presenting it, note, 2 A. L. R. 1381.

Who must bear loss of funds from failure of bank, at which bill or note

Delay in presenting accepted check for payment as affecting liability of drawee bank, note, 42 A. L. R. 1138.

6014.82. Unincorporated banks—Designation of name. It shall be unlawful for any person or persons in anywise to conduct a commercial banking business, or a banking business of discount and deposit, within the state of Montana, in the capacity of an individual or of a copartnership or of an unincorporated association, unless the name under which such bank is known and conducted shall contain the name of such individual, or the name of at least one actual and responsible member of such copartnership or association, in addition to which name there shall be no other designation than the words "bank of," "banking house of," "banker," or "bankers." Nothing in this section shall apply to any person, firm or association now conducting a private banking business in this state, which bank is now authorized by the state banking department to do a banking business.

En. Sec. 82, Ch. 89, L. 1927.

6014.83. Financial condition required of unincorporated bank. Every such individual, copartnership, or association intending to conduct such bank or banking business within the state of Montana, shall, before the receipt of any money whatsoever on deposit, actually own and possess, within the state of Montana, approved property or assets not exempt from execution of the minimum value of not less than twenty thousand dollars (\$20,000) in cities and towns having a population of over two thousand (2,000) and not less than five thousand (5,000), the sum of thirty thousand dollars (\$30,000); in cities having a population of five thousand (5,000) and not less than ten thousand (10,000), the sum of fifty thousand dollars (\$50,000); in cities having ten thousand (10,000), population and less than twenty-five thousand (25,000) the sum of seventy-five thousand dollars (\$75,000); in all cities having a population of twenty-five thousand (25,000) or over, the sum of one hundred thousand dollars (\$100,000); which financial condition must appear and be carried on the books of any such bank or banks. Such requirement shall extend and be applicable separately to each and every private bank conducted by any person, copartnership, or association, and no asset or assets shall appear on the books of more than one bank.

En. Sec. 83, Ch. 89, L. 1927.

6014.84. Private banks subject to inspection by state examiner. Every private bank, corporation, or association conducting a banking business within the state of Montana, operating under the foregoing provisions, shall be subject to examination and visitations of the state examiner once each year, and oftener when deemed necessary by said examiner, who shall have full power and authority to investigate and examine all books,

papers and effects of any such bank or banking house for the purpose of ascertaining the financial condition of any such bank or banks, and shall have the power in aid thereof to administer oaths to any person or persons, or the agent or employees of any person or persons conducting such bank or banking business.

En. Sec. 84, Ch. 89, L. 1927.

6014.85. Information obtained by state examiner to be deemed confidential—Penalty for the violation thereof. Any knowledge or information gained or discovered by the state superintendent of banks, in pursuance of his powers or duties as herein prescribed, shall be deemed confidential information of the state examiner's office only, and such information shall not, except as herein provided, be imparted to any person or persons who are not officially associated in and with the office of the state examiner, and such information shall be used by the state examiner only in the furtherance of his official duties, except that it shall be lawful for the department to exchange information with the federal banking department and departments of other states and to furnish information to prosecuting officials who require the same for use in pursuit of official duties. Any state examiner or deputy, assistant, or clerk in his employ, who violates any of the provisions of this section, or willfully makes a false official report as to the condition of any bank, shall be removed from office, and shall also be deemed guilty of a felony, and upon conviction thereof shall be punished by a fine of not exceeding one thousand dollars (\$1,000), or by imprisonment in the state penitentiary for not exceeding five (5) years, or by both such fine and imprisonment.

En. Sec. 85, Ch. 89, L. 1927.

6014.86. Report of private bank. The cashier of any bank doing business under the provisions of this act, when so directed by the state superintendent of banks, shall make a report to the said superintendent of banks at his call; which report shall not be made less than three (3) times during each year, and which said report shall not be made less than two (2) calendar months apart, which said reports shall be made in a form prescribed by the superintendent of banks, verified by the oath or affirmation of said cashier, which said statements or reports must contain a full abstract of the general accounts of the bank, and exhibit under appropriate head the resources and liabilities thereof, so as to plainly show all of the resources and liabilities of said bank, and the amount at any time thereof, which said statements shall be transmitted to the superintendent within five (5) days after the receipt of the request or requisition therefor. Said report, in such condensed form as may be required by said superintendent, must be published once in a newspaper of general circulation in the place where said bank is located, or if there be no newspaper of general circulation published in said place, then in the nearest newspaper available, which publication must be at the expense of the bank making said report, and such proof of publication of the said report shall be furnished as may be required by the said superintendent. The superintendent of banks shall also have power to call for special

reports from any particular bank whenever in his judgment the same are necessary under the provisions of this act.

En. Sec. 86, Ch. 89, L. 1927.

6014.87. Receiving deposits by insolvent bank—Making false entries.

Any person, or the members of any copartnership or banking association, wilfully or knowingly receiving deposits, money, or commercial papers, circulating as money, when such person or copartnership or banking association is insolvent or who subscribes or makes any false statement, or entries in the books of any such bank, or who knowingly subscribes or exhibits any false papers, with the intention of deceiving any person authorizing [authorized] to examine the condition of any bank provided for in this act, or who wilfully subscribes or makes false reports to the superintendent of banks, shall be guilty of a felony, and shall be punishable by imprisonment in the state prison for a term not exceeding (5) years.

En. Sec. 87, Ch. 89, L. 1927.

May offense of obtaining money by false pretenses be predicated on false statements by bank officers concerning the solvency of the bank, to obtain a deposit, note, 24 A. L. R. 402.

Constitutionality of statute making failure of bank prima facie evidence of knowledge of insolvency at time of receipt of deposits, note, 51 A. L. R. 1154.

For text treatment of this subject see vol. 4 Cal. Jur. 205.

6014.88. Bank insolvent when. A bank is insolvent within the meaning of this act when all of its capital, surplus and undivided profits are absorbed in losses and the remaining assets are not sufficient to pay and discharge its contracts, debts, and engagements.

En. Sec. 88, Ch. 89, L. 1927.

tion for fraud, notes, 41 A. L. R. 674; 46 A. L. R. 484.

Insolvency of corporation as barring stockholder's right to rescind subscrip-

For text treatment of this subject see vol. 4 Cal. Jur. 285.

6014.89. Liability on items forwarded. Any bank operating in the state of Montana, and receiving for collection or deposit any check, note, draft, or negotiable instrument, may send such check, note, draft or negotiable instrument for collection direct to the bank on which it was drawn or at which it is payable, and it or its agent may accept a bank draft in payment of or in remittance for such check, note, draft, or negotiable instrument, and neither the forwarding bank nor its agent using due diligence shall be held liable for any loss resulting from the acceptance of bank draft in lieu of cash, nor for the failure of the drawee bank to remit for such item, nor for the nonpayment of any bank draft accepted in payment or as a remittance from the drawee bank. The obligation of the maker upon any such check, note, draft or negotiable instrument so handled for collection shall not be discharged by the charging of such item to him on the books of the drawee bank or by the surrender of any such item to him by the drawee bank, or unless or until such remittance draft be paid.

En. Sec. 89, Ch. 89, L. 1927.

instrument indorsed by him for collection, note, 30 A. L. R. 341.

Title to commercial paper deposited for collection, note, 11 A. L. R. 1046.

Check on bank as payment of debt held by bank for collection, note, 18 A. L. R. 537.

Presumption and burden of proof as to title of one in possession of negotiable

Bank's duty as to notices of protest

or dishonor received from correspondent, note, 4 A. L. R. 534.

Bank's duty as to return of bill or note taken for collection if not paid, note, 6 A. L. R. 618.

Right of bank to retain from true owner commercial paper sent for collection, and its proceeds, for payment of antecedent debt of sender, note, 12 A. L. R. 1055.

Right of bank which receives for collection draft with bill of lading attached, to deliver bill of lading conditionally to consignee to enable him to inspect the goods, note, 18 A. L. R. 732.

Right of bank to repudiate payment to foreign correspondent, note, 23 A. L. R. 1232.

Rights of bona fide taker from bank, as against one who deposits paper for collection without any indication on the paper of that purpose, note, 49 A. L. R. 1373.

Liability of bank to obligor of paper

for negligence in making collection, note, 4 A. L. R. 521.

Liability of collecting bank for loss of funds through attachment, note, 36 A. L. R. 742.

Misnomer or abbreviation of name of intended payee as affecting liability, note, 29 A. L. R. 368.

Damages for accepting depreciated or illegal currency or other paper, note, 19 A. L. R. 588, 589.

Damages for bank's failure to notify owner of paper held for collection of nonacceptance or nonpayment, note, 19 A. L. R. 576.

Damages for bank's breach of duty in respect to presentment of paper held for collection, note, 19 A. L. R. 564.

Trust in proceeds of collections made by charging debtor's account in collecting bank, notes, 24 A. L. R. 1152; 42 A. L. R. 754.

For text treatment of this subject see vol. 4 Cal. Jur. 256.

6014.90. Same—What constitutes due diligence. When a check, draft, note or negotiable instrument is deposited in a bank for credit or for collection, it shall be considered due diligence on the part of the bank of deposit, in the collection of any such item (check, draft, note or negotiable instrument so deposited), to forward en route the same not later than the following banking business day.

En. Sec. 90, Ch. 89, L. 1927.

6014.91. Superintendent to make rules and regulations. The superintendent of banks shall have the power to adopt and promulgate uniform rules and regulations to govern the examination and reports of banks and prescribe the form in which such banks shall report their assets, liabilities and reserves.

En. Sec. 91, Ch. 89, L. 1927.

6014.92. Special examination defined. Any examination made by the superintendent of banks otherwise than in the ordinary routine of the department, and because in his opinion the condition of the bank requires such examination, and every examination made at the request of the board of directors or stockholders of any bank shall be deemed a special examination.

En. Sec. 92, Ch. 89, L. 1927.

6014.93. Examination at request of directors. When requested in writing, upon the authority of a majority of the board of directors of any bank to make an examination of such bank, the superintendent of banks shall do so.

En. Sec. 93, Ch. 89, L. 1927.

6014.94. Consolidation of banks. Any two (2) or more banks may, with the approval of the superintendent of banks, consolidate into one (1)

bank under the charter of either existing bank, on such terms and conditions as may be lawfully agreed upon by a majority of the board of directors of each bank proposing to consolidate, and be ratified and confirmed by the vote of the shareholders of each such bank owning at least two-thirds of its capital stock outstanding, at a meeting to be held on the call of the directors, after sending notice to each shareholder of record by registered mail at least ten (10) days prior to said meeting; provided, that the stockholders may unanimously waive such notice and may consent to such meeting and consolidation in writing. Provided also, that the capital stock of such consolidated bank shall not be less than that required under existing law for the organization of a bank of the class of largest consolidating bank.

The assets and liabilities of the consolidated bank shall be reported by the surviving bank. All the rights, franchises, and interests of said bank so consolidated in and to every species of property, real, personal and mixed and choses in action thereto belonging, shall be deemed to be transferred to and vested in such bank into which it is consolidated without other instrument of transfer, and the said consolidated bank shall hold and enjoy the same and all rights of property, franchises, and interests in the same manner and to the same extent as was held and enjoyed by the bank so consolidated therewith, provided, however, that merging bank shall transfer to the surviving bank all of its real property by good and sufficient deed of conveyance and for that and other purposes shall remain a body corporate for a period of at least three (3) years after merger and shall not then dissolve without the approval of the superintendent of banks.

En. Sec. 94, Ch. 89, L. 1927.

For text treatment of this subject see
vol. 4 Cal. Jur. 121.

Consolidation or merger of bank as
affecting liability on stock subscription,
note, 45 A. L. R. 1031.

6014.95. Taxes on banks which have ceased to do business as banks. Whenever any bank ceases to do business as a bank no taxes shall be levied or collected in accordance with the laws governing the assessment of banks, but its property shall be assessed in accordance with the laws governing the assessment of similar property of private corporations.

En. Sec. 95, Ch. 89, L. 1927.

6014.96. Attachments prohibited. No property owned by any bank, organized under the laws of the state of Montana, shall be subject to attachment.

En. Sec. 96, Ch. 89, L. 1927.

6014.97. Conversion surplus and undivided profits to capital. A bank having a surplus and undivided profits equal to or in excess of fifty per centum (50%) of its capital stock, may increase its capital stock by the issuance of new stock for a part of said surplus and undivided profits. Said increase may be made by the vote of two-thirds ($\frac{2}{3}$) of the stock in person or by proxy, either at a regular annual stockholders' meeting or at a meeting called for said purpose in accordance with the by-laws of the corporation. All increases of capital stock made under this section

must be accomplished in such a manner as to conform to the requirements of this act as to surplus of banks when first incorporated. New capital stock when issued by a bank against its surplus and undivided profits may be issued without the payment of cash therefor, but the same shall be charged upon the books of the bank and in the statements thereof against surplus and undivided profits in such a manner that the combined capital, surplus and undivided profits shall not be reduced by the issuance of said new stock. Whenever a bank shall have voted to issue any stock as contemplated in this section, it shall certify such action to the superintendent of banks, who shall within thirty (30) days, approve or reject the plan. His action shall be final and written notice thereof shall be given to the bank. If the superintendent of banks approves of the issuance of said new stock and so notifies the bank, it shall thereupon file certificate thereof with the county clerk and recorder of the county wherein the bank is located and with the secretary of state of the state of Montana. Upon said filing with the secretary of state, the increase shall become effective.

En. Sec. 97, Ch. 89, L. 1927.

6014.98. Superintendent to examine trusts. It shall be the duty of the state superintendent of banks as a part of the examination of trust companies and banks to check all trusts, trust funds and trust and estate accounts held in the possession and control of the bank or trust company.

En. Sec. 98, Ch. 89, L. 1927.

6014.99. Extent assets may be pledged. No bank, banker or bank officer shall, except as otherwise authorized by law, pledge or hypothecate as collateral security for money borrowed, its assets in a ratio exceeding one and one-half times the amount borrowed (except as otherwise authorized by the superintendent).

En. Sec. 99, Ch. 89, L. 1927.

6014.100. Superintendent make rules. The superintendent of banks shall have the authority to make and promulgate reasonable rules and orders in the matter of bookkeeping and accounting by state banks, including the keeping of reasonable credit information or information in connection with assets, and for information in connection with charged off items.

En. Sec. 100, Ch. 89, L. 1927.

6014.101. Branch bank prohibited. No bank shall maintain any branch bank, receive deposits or pay check, except over the counter of and in its own banking house. Provided, that nothing in this section shall prohibit ordinary clearing house transactions between banks.

En. Sec. 101, Ch. 89, L. 1927.

Power to establish branch banks, note, 50 A. L. R. 1342.

Power of national bank to establish branches, note, 30 A. L. R. 927.

Effect of illegal establishment of branch banks, note, 50 A. L. R. 1359.

Effect of maintenance of branch banks on rights of creditors, on insolvency of branch or parent bank, note, 50 A. L. R. 1353.

Authority of officers of branch bank, note, 50 A. L. R. 1353.

Duty of other branches or parent bank

to pay checks on branch bank, note, 50 A. L. R. 1357.

Notice to branch bank as notice to principal, or vice versa, note, 50 A. L. R. 1358.

Overdraft in one branch bank as justifying refusal to honor checks drawn on another, note, 50 A. L. R. 1359.

For text treatment of this subject see vol. 4 Cal. Jur. 128.

6014.102. Past due and doubtful paper. Every bank carrying any bad debt, or a debt of doubtful value, as an asset, shall upon the request or demand of the superintendent of banks collect the same, or put it in good bankable condition, or charge it out of its books.

En. Sec. 102, Ch. 89, L. 1927.

6014.103. Reserve—Reports on. It shall be the duty of any bank whose reserve shall drop below the legal requirements to report the matter to the superintendent of banks immediately and as often thereafter as the superintendent shall ask for said report.

En. Sec. 103, Ch. 89, L. 1927.

6014.104. Payment to foreign administrator. Any bank doing business in this state may pay any money remaining to the credit of a deceased depositor or deliver any personal property in its possession belonging to such deceased depositor to an administrator or executor of such depositor duly appointed and qualified in another state, provided no demand therefor shall have been previously made by an administrator or executor appointed in any county of this state, and such payment shall discharge the bank making the same from its liability on account of such deposit.

En. Sec. 104, Ch. 89, L. 1927.

6014.105. Bonding of employees. It shall be the duty of the board of directors of every bank to require that all officers and employees of banks whose duties include the handling of money, notes, bonds, credits and cash items and whose duties include bookkeeping and the making of entries in relation to the business of the bank, be bonded. The board of directors shall by order duly entered on the minute-books of the board designate the officers and employees to be bonded and the amounts of bonds to be given. Such action as to personnel and amount and surety to be subject to approval of superintendent. Said bonds to guarantee the bank against loss on account of the dishonesty or malfeasance in office of its employees. Bonds to be approved by the president of the bank and his action to be reported to the board of directors. Bonds to be kept in custody of some officer other than the individual liable on the bond and for whom the same is given.

En. Sec. 105, Ch. 89, L. 1927.

6014.106. Corporate existence—Cease when. The charters and the corporate existence of banks shall cease automatically and become non-existent upon the completion of liquidation of the affairs of said bank whether accomplished voluntarily or through legal process. For the purposes of this section a bank's affairs shall be considered liquidated and completed when all of its property of every kind has been sold or applied

toward the payment of its obligations, and the corporation is left without property in existence or in reasonable expectancy.

En. Sec. 106, Ch. 89, L. 1927.

6014.107. Bank advertising before issuance of charter. It shall be unlawful for any individual, firm or corporation to advertise, publish or otherwise promulgate that it is engaged in the banking business without first having obtained authority from the department of banking, as herein provided. Any such individual, or member of such firm, or officer of any such corporation so offending, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished as provided by the laws of this state.

En. Sec. 107, Ch. 89, L. 1927.

6014.108. Right of examination by stockholder. No stockholder of any bank incorporated under the laws of this state who is not a director shall have the right to inspect the books and records of such bank showing its transactions with any of its customers, but any such stockholder shall have the right to inspect during business hours the general statement book showing the general assets and liabilities of such bank.

En. Sec. 108, Ch. 89, L. 1927.

Inspection of books and records by stockholder, notes, 22 A. L. R. 80; 43 A. L. R. 788.

6014.109. Removal of directors, officers or employees. Any director, officer, or employee of any bank found by the superintendent, after examination, to be negligent, dishonest, reckless or incompetent, shall be removed from office by the board of directors of such bank on the written order of the superintendent, and if the directors neglect or refuse to remove such director, officer or employee, in event any losses accrue to such bank thereafter by reason of the negligence, dishonesty, recklessness or incompetency of such director, officer or employee such written order of the superintendent shall be deemed to be conclusive evidence of the negligence of the directors failing to act upon the same as herein provided in any action brought against them, or any of them by a depositor or creditor for recovery of such losses.

En. Sec. 109, Ch. 89, L. 1927.

6014.110. Borrowing money—Limitations. No bank shall borrow money, except to meet its seasonal requirements or unexpected withdrawals. Provided, that at no time shall the bills payable and rediscounts of any bank be permitted to exceed in the aggregate an amount equal to the capital and surplus of such bank, except with the written consent of the superintendent, first had and obtained. Whenever it shall appear to the superintendent that a bank is borrowing money in excess of the above limitation, or for the purposes other than as specified above, he may require it to reduce such borrowing within a time to be fixed by him.

En. Sec. 110, Ch. 89, L. 1927.

6014.111. No C. D. to issue for borrowed money. No bank shall issue its certificate of deposit for the purpose of borrowing money or make partial payments upon any certificate of deposit.

En. Sec. 111, Ch. 89, L. 1927.

deposit by officer by acceptance and retention of benefits, note, 7 A. L. R. 1479.

Ratification by corporation of unauthorized issue or receipt of certificate of

6014.112. Giving security for deposit prohibited. It shall be unlawful for any bank to pledge, mortgage or hypothecate to any depositor any of its real or personal property as security for any deposit and any pledge, mortgage or hypothecation made in violation thereof shall be unenforceable; provided, however, that this provision shall not apply to any deposits of moneys of the United States and public funds deposited in accordance with the provisions of any depository act of this state, or the United States.

En. Sec. 112, Ch. 89, L. 1927.

Power of bank to pledge assets to secure general depositors, note, 51 A. L. R. 313.

6014.113. Penalty for unlawful hypothecation of assets. Any officer or employee of any bank doing business in this state, who, except in the manner authorized by law or the contract of the parties, hypothecates, pledges, or in any way alienates any notes, stocks, bonds, mortgages, securities or any other property coming into his hands or into the possession of said bank as collateral, for safekeeping or in any other manner, and to which the bank has not acquired full title, shall be guilty of embezzlement, and upon conviction thereof shall be punished as for other felonies.

En. Sec. 113, Ch. 89, L. 1927.

6014.114. Concealment of loans and discounts. Any officer or employee of any bank who intentionally conceals from the directors of such corporation or committee thereof where the directors have delegated authority to a committee to pass on loans and discounts, any discount or loan made by and in behalf of the corporation or from its assets between the regular meetings of its board of directors or committee, the purchase of any security, the sale of any of its securities, or any guarantee, repurchase agreement or any other agreement whereby the corporation is obligated, during the same period, is guilty of a misdemeanor, and on conviction, must be imprisoned in the county jail for not more than twelve (12) months for each offense, and may also be fined not more than five hundred dollars (\$500), at the discretion of the court.

En. Sec. 114, Ch. 89, L. 1927.

6014.115. Transaction on holidays. Nothing in any law of this state shall in any manner whatsoever affect the validity of, or render void or voidable, the payment certification or acceptance of a check or other negotiable instrument, or any other transaction by a bank in this state, because done or performed during any time other than regular banking hours or on a legal holiday; provided, that nothing shall be construed herein to compel any bank in this state, which by law or custom is en-

titled to close at twelve noon on any Saturday, or for the whole or part of any legal holiday, to keep open for transaction of business, or to perform any of the acts or transactions aforesaid on any Saturday after such hour or on any legal holiday except at its option.

En. Sec. 115, Ch. 89, L. 1927.

6014.116. Time limit on stop-payment. No revocation, countermand, or stop-payment order relating to the payment of any check or draft against an account of a depositor in any bank doing business in this state shall remain in effect for more than ninety (90) days after the service thereof on the bank, unless the same be renewed, which renewals shall be in writing and which renewals shall be in effect for not more than ninety (90) days from date of service thereof on the bank, but such renewals may be made from time to time.

All notices affecting checks upon which revocation, countermand, or stop-payment order have been made at the time of the taking effect of this act shall not be deemed to continue for a period of more than ninety (90) days thereafter.

En. Sec. 116, Ch. 89, L. 1927.

Right of drawer to stop payment of certified check, note, 35 A. L. R. 942.

Drawer's liability when payment of check is stopped, note, 14 A. L. R. 562.

Stipulation or notice as to liability

of bank which fails to comply with order stopping payment of check, note, 9 A. L. R. 1069.

Bank's right to recover back money paid on stopped check, note, 39 A. L. R. 1239.

6014.117. Embezzlement. Any banker, officer, director or employee of any bank who embezzles or abstracts or misapplies any of the moneys, funds, credits, or property of the bank when owned by it or held in trust; or who issues or puts forth any certificate of deposit, draws any order or bill of exchange, makes any acceptance, assigns any note, bond, draft, bill of exchange, mortgage, judgment or decree, with intent, in any case to injure or defraud the bank or any person or corporation, or to deceive any officer of the bank, or any other person, or anyone appointed to examine the affairs of such bank, or any person, who with like intent, aids or abets any officer, clerk or employee in the violation of this section, shall be guilty of a felony and upon conviction thereof, shall be imprisoned in the state penitentiary for a period of not exceeding twenty (20) years.

En. Sec. 117, Ch. 89, L. 1927.

6014.118. False statement to obtain loan. Whoever shall make any statement, knowing it to be false, for the purpose of obtaining for himself or for any other person, firm, corporation, or association a loan of money from any bank, or for the purpose of gaining an extension of time of payment of any debt due such bank, shall be punished by a fine of not more than one thousand dollars (\$1,000) or by imprisonment in the county jail for not more than one year, or both.

En. Sec. 118, Ch. 89, L. 1927.

6014.120. Persons previously convicted under banking laws. It shall be unlawful for anyone having been convicted of the violations of the banking laws of any state or nation, to accept employment in a bank in

this state, without first stating said facts to the directors of said bank. No such person shall be employed in any bank without the approval of the superintendent of banks, granted in writing after a full consideration of the facts.

En. Sec. 120, Ch. 89, L. 1925.

6014.121. Liquidation of banks—Grounds for closing bank. Whenever it shall appear to the superintendent of banks that:

(1) Any bank has wilfully violated its charter or any law of this state; or,

(2) Has wilfully violated any general rule or regulation of the superintendent, made in accordance with law; or

(3) That the capital of any bank is impaired or for any reason is below the amount required by law and has not been made good after notice, as provided by law, or without such notice, in event a majority of the board of directors of such bank notify the superintendent in writing that the same cannot be made good; or,

(4) That such bank cannot meet or has failed to meet its liabilities or any of the same, as they become due in the regular course of business; or,

(5) That its reserve has fallen below the amount required by law and it has failed to make good such reserve within thirty (30) days after being requested to do so by the superintendent, or, without such notice, if a majority of the directors, in writing, notify the superintendent that such reserve cannot be made good within thirty (30) days, or if it is continually allowing its reserve to fall below the required amount; or,

(6) That it is conducting business in an unsafe and unauthorized manner, or is in an unsafe or unsound condition; or,

(7) It has refused to submit its papers, books and concerns to the inspection of the superintendent or his authorized agent or representative; or,

(8) That any officer of such bank has refused to be examined on oath touching the affairs, business or concerns of any bank in so far as such relate to the solvency of the bank or matters having to do with the supervision by the superintendent.

The superintendent himself, or his duly authorized agent upon express authority from the superintendent, may, in his discretion close said bank and take possession of all the books, records, assets and business of every description of such bank, and hold the same and retain possession thereof until such bank shall be authorized by him to resume business, or its affairs be liquidated as herein provided, and he shall do so in cases where a bank comes into his hands voluntarily, or in the manner provided by law.

The powers and authority conferred on the superintendent by this section, except in cases of voluntary surrender, shall be considered as discretionary and not as mandatory, and so long as a superintendent acts in good faith in the matter, neither he nor his deputies shall be held liable civilly or criminally or upon their official bonds in any action taken thereunder or for any failure to act thereunder.

En. Sec. 121, Ch. 89, L. 1927.

6014.122. Penalty for closing bank with criminal intent. If any superintendent of banks or official in the department of banking, shall, as a result of malice or for personal gain, declare any bank insolvent, he shall, upon conviction thereof, be subject to punishment by fine not exceeding one thousand dollars (\$1,000) or imprisonment in the county jail not exceeding one (1) year, or both, within the discretion of the court and shall forfeit his office.

En. Sec. 122, Ch. 89, L. 1927.

6014.123. Bank may be placed in superintendent's possession. Any bank may place its affairs and assets under the control and in the possession of the superintendent by posting a notice on the front door of such bank, indicating that said bank is in his hands, which notice shall be signed, in their own handwriting, by a majority of the directors in office of such bank. Immediately upon the posting of such notice by any bank, it shall notify the superintendent thereof.

En. Sec. 123, Ch. 89, L. 1927.

6014.124. Effect of posting notice. The posting of such notice by the directors of any bank, or of a like notice signed by the superintendent, shall be sufficient to place all assets and property of such bank, of whatever nature and wherever situate, in possession of the superintendent, and shall operate as a bar to any attachment or any other legal proceedings against such bank or its assets, and no valid lien or claim can be acquired or created, or transfer or assignment made in any manner, binding or affecting any of the assets of such bank after the posting of such notice or after taking possession of any bank by the superintendent without his consent.

En. Sec. 124, Ch. 89, L. 1927.

6014.125. Taking possession of bank—Notice. On taking possession of the assets and business of the bank, the superintendent shall, in addition to posting notice thereof on the front door of such bank as aforesaid, also notify at once, personally or by wire, all corresponding banks, and any and all persons or corporations known to him to be holding or in possession of, any of the estate of such bank.

En. Sec. 125, Ch. 89, L. 1927.

6014.126. Resumption after closing. After the superintendent has taken possession of any bank, he may permit such bank to resume business upon such conditions as may be approved by him.

En. Sec. 126, Ch. 89, L. 1927.

6014.127. Powers of superintendent on closing bank. Upon taking the assets and business of any bank into his possession, the superintendent is authorized to collect all moneys due to such bank, and to do such other acts as are necessary to conserve its assets and business, and he shall proceed to liquidate the affairs thereof. He shall have general and inclusive power and authority, except as otherwise limited by the terms of this act, to do any and all acts, to take any and all steps necessary, or, in his discretion, desirable for the protection of the property and assets

of such bank and the speedy and economical liquidation of the assets and affairs of such bank and the payment of its creditors, or for the reopening and resumption of business by said bank, where that is practicable or desirable. He may institute, in his own name as superintendent, or in the name of the bank, such suits and actions and other legal proceedings as he deems expedient for such purposes, and by making application to the district court of the county in which such bank is located, or to the judge thereof, in chambers, may procure an order to sell, compromise or compound any bad or doubtful debt or claim, and to sell and dispose of any or all the assets, which sale may be made to stockholders, officers, directors, or others interested in such bank, on consent of the court. On such court proceedings the bank shall be made a party by notice issued on order of the court or judge, in lieu of summons, and served upon some officer of the bank, if any there be in the county, but if no officer can be found in the county then the same shall be posted in manner and form the same as probate notices. That is in three (3) public places in the county for at least ten (10) days before the day of hearing thereon. The hearing of any such application or petition by the superintendent may be had at any time, either in term or vacation in court, or in chambers, as the court may order, after said bank has had five (5) days' notice of such application, or the notice has remained posted for at least ten (10) days.

En. Sec. 127, Ch. 89, L. 1927.

6014.128. Recourse of aggrieved bank. Any bank deeming itself aggrieved by the action of superintendent in taking possession of its assets or closing its doors may, within ten (10) days after such possession shall have been taken, apply to the district court of the county in which its principal place of business is located, or to the judge thereof in chambers, to enjoin further proceedings by the superintendent, and the court or the judge thereof in chambers, after notifying the superintendent to appear at a specified time and place to show cause why further proceedings should not be enjoined, and after hearing the allegations and proofs of the parties, and determining facts, may, on the merits, dismiss such application, or enjoin the superintendent from further proceeding and direct him to surrender the business and assets of said bank. Such application for injunction may be heard at any time after five (5) days' notice from the time of service on said superintendent, in the discretion of the court, or the judge thereof, or at any time prior thereto by the consent of the superintendent. Application therefor shall be made on the verified complaint of the bank, in the ordinary form used in civil actions in district court, and a copy of such complaint shall be served on the superintendent with the order to show cause. The superintendent shall, at least two (2) days before the time set for hearing, file in the cause, and serve upon counsel for plaintiff an answer to the complaint, also in the ordinary form used in civil actions in the district court. Demurrers and motions directed to pleadings are not permissible in proceedings had under this section, but any questions raised by demurrer or motion in other actions may be raised in the answer. On the issues thus made on the complaint and answer, the court, or the judge thereof at chambers, at the time fixed for showing cause, or at such other

time to which he, in his discretion, may continue the same, shall try the matter on the merits by hearing the allegations and proofs of the parties, in the same manner as on the trial of ordinary civil actions in the district court, and the rules governing the trial of ordinary civil actions and for the production and taking of evidence and hearing the examinations of witnesses and the entry of findings and judgments therein, shall prevail. In event the superintendent makes no appearance in the time limited, the court shall enter his default and proceed to hear the proofs of the plaintiff in like manner as in civil actions under similar circumstances, and enter judgment accordingly. The judgment entered either after hearing on the merits or by default, shall be final judgment from which either party shall have the right, by notice filed within twenty (20) days after entry, to appeal to the supreme court, in the same manner as from final judgment in a civil action. Provided, however, that during the pendency of such litigation the superintendent of banks shall take such action in relation to the assets of said bank as is necessary to conserve them.

En. Sec. 128, Ch. 89, L. 1927.

6014.129. Superintendent may appoint agents. The superintendent may, under his hand and seal, appoint and authorize an agent to assist him or act for him in the performance of any powers or duties hereunder, the certificate of appointment to be filed in the office of said superintendent, and a certified copy thereof delivered to such agent. Such agent and other employees hereinafter mentioned, shall receive a salary, to be fixed as hereinafter provided, for the time he is actually engaged in the performance of such duties. The superintendent may also employ such attorneys and procure such expert accountants and other experts, assistants and employees as may be necessary in the liquidation and distribution of the assets of any such bank, and the performance of his duties hereunder, and may retain such of the officers or employees of such bank as he may deem necessary. He shall require from the agent appointed by him and from such of the assistants as will have charge of any of the assets of the bank such security for the faithful discharge of their duties as he may deem proper.

Provided, further, that the superintendent may also designate any one of the examiners of the department of banking as a general liquidating agent, with his office in the department of banking, for the purpose of liquidating any one or all state banks in the process of liquidation, and for the purpose of conducting such liquidation under the direction of said superintendent; and may authorize the said liquidating agent to employ such clerical help as may be necessary. Such liquidating agent shall receive a salary to be fixed by the superintendent of banks, not to exceed three thousand six hundred dollars (\$3,600) per year, and necessary traveling and hotel expenses incurred in the performance of his official duties. The salary of the liquidating agent and necessary clerical assistance, and other expenses incurred by the said liquidating agent shall be borne equally and ratably by the bank or banks in process of liquidation under such agent's charge in proportion to the total amount of resources of each of such banks. The funds for such expenses shall be raised by assessing each bank in ratio herein set forth and paying

such expenses direct to the persons entitled thereto, without depositing any of such funds in the state treasury.

En. Sec. 129, Ch. 89, L. 1927.

6014.130. Compensation of agents and attorneys. The compensation of the agents, appointed by the superintendent, and of attorneys, expert accountants and other assistants, and all expenses of liquidation and distribution of a bank whose assets and business shall be taken possession of by the superintendent, shall be fixed by the superintendent, but subject to be approved by the judge of the district court of the county in which the bank is located, on notice of such bank, and the superintendent of banks shall upon written request of said district judge supply semi-annual statements showing the condition of said bank in process of liquidation. Except in cases of emergency, the compensation to be paid to attorneys and expert accountants shall be fixed and approved before services are rendered. When the compensation shall have been so fixed and approved and the services rendered, the same shall be paid out of the funds of such bank in the hands of the superintendent, and shall be a proper charge and lien on the assets of such bank as herein provided.

En. Sec. 130, Ch. 89, L. 1927.

6014.131. Notice to creditors of insolvent bank. The superintendent shall cause notice to be given by advertisement in a newspaper of general circulation in the town or city in which said bank is situated, if there be one, and if not, then in such other newspaper published in the state of Montana, as the superintendent shall designate, once a week for two successive weeks, calling on all persons who have claims against said bank to present the same to the superintendent or his duly authorized agent at a place to be specified in said notice, and to make sworn proof thereof, in form to be fixed by him, within the time specified in said notice, not less than ninety days from the date of the first publication thereof. A copy of such notice shall be mailed to all persons whose names appear as creditors upon the books of the bank.

En. Sec. 131, Ch. 89, L. 1927.

6014.132. Claims—Allowance and rejection. The superintendent shall reject or allow all claims in the whole or in part, and on each claim allowed shall designate the order of its priority. If a claim is rejected or an order of priority allowed lower than that claimed, notice shall be given the claimant personally or by registered mail, and an affidavit of the service of such notice, which shall be prima facie evidence thereof, filed in the office of the superintendent. The action of the superintendent shall be final unless an action be brought by the claimant against the bank in the proper court of the county where the bank is located within ninety days after such service to fix the amount of the claim and its order of priority or either. An appeal from the superintendent's allowance, either as to priority or amount, may also be taken to the district court of such county by any party in interest by serving on the superintendent notice thereof, stating the grounds of objection and filing the same in said court within thirty days after allowance. Within five days

after such notice, the superintendent shall file in the court, and serve on the appellant, a copy of the claim and his reasons for allowance. The court or judge shall, after five days' notice of time and place of hearing on the issues thus made, hear the proof of the parties and enter judgment reversing, affirming or modifying the superintendent's action.

En. Sec. 132, Ch. 89, L. 1927.

6014.133. Payment of claims. Claims presented to the superintendent prior to the expiration of the time fixed in the notice to creditors therefor, and allowed by him, shall be paid in the order of priority herein-after fixed. Those filed after such expiration and prior to one year thereafter shall be entitled, after they have been allowed by the superintendent, to share in the distribution of the assets of the bank only to the extent of the assets undistributed in the hands of the superintendent and available for the payment of claims of their order of priority at the time such claims are filed, but as against other claims of their same order of priority, on which dividends have been paid, they shall be entitled to payment in a proportionate amount before further payments are made on such other claims. All claims filed after the expiration of one year following the date fixed in the notice to creditors as the time for presentation of claims are not entitled to be allowed or paid unless all other creditors' claims of any kind or character, except claims of shareholders, based on stock or assessments paid on stock shall have been fully paid and discharged, and a surplus remains in the hands of the superintendent, and then only from such surplus.

En. Sec. 133, Ch. 89, L. 1927.

6014.134. Claims—Order of payment—Priorities. The order of payment of the debts of a bank liquidated by the superintendent shall be as follows:

(1) The expense of liquidation, including compensation of agents, employees and attorneys.

(2) All funds held by the bank in trust.

(3) All funds of any other bank in process of liquidation by the superintendent of banks and placed on deposit by the superintendent of banks during the period of liquidation thereof.

(4) Debts due depositors, holders of cashier's checks, certified checks, drafts on correspondent banks, including protest fees, paid by them on valid checks or drafts presented after closing of the bank, pro rata. All deposit balances of other banks or trust companies and all deposits of public funds of every kind and character (except those actually placed on special deposit under the statutes providing therefor) including those of the United States, the state of Montana, and every county, district, municipality, political subdivision or public corporation of this state, whether secured or unsecured, or whether deposited in violation of law or otherwise, are included within the terms of this subdivision and take the same priority as debts due any other depositor. All contractual liabilities pro rata.

(5) Interest on all the foregoing classes of claims without regard to the priority of the principal computed as follows:

Savings accounts at the same rate they bore at the time of the closing of the bank until the next regular date for the computation and crediting of the interest thereon, and thereafter at the rate of seven per cent (7%) per annum; time certificates of deposit at the rate fixed in the certificate until the same becomes due by their terms, and thereafter at the rate of seven per cent (7%) per annum; all other contractual obligations bearing interest at the rate they bore at the time of closing until due by their terms, and thereafter at seven per cent (7%) per annum, and those not bearing interest, at the rate of seven per cent (7%) per annum from the time when said bank came into possession of the superintendent; no interest to be compounded.

(6) Unliquidated claims for damages and the like. Provided, however, that the superintendent may, in his discretion, without regard to the priorities herein fixed in subdivisions 3, 4, 5, and 6 of this section, or in preference to the payment of any claims of creditors within these subdivisions, pay off and discharge any lien, claim or charge against the assets or property of the bank in his hands and pay out and expend such sums as he deems necessary for the preservation, maintenance, conservation and protection of any such assets and property, and likewise property on which the bank has liens by mortgage or otherwise; and he may also, in his discretion, create a fund or retain in his hands in preference to the claim of any creditors in the subdivisions above mentioned money for the aforesaid purposes.

Collateral which shall have been put up or pledged as security for the payment of bills payable by any bank, or any loans or discounts which shall have been outstanding as rediscounts of any bank prior to the closing thereof, shall not be available to the other creditors of such bank in whole or in part until such bills payable or rediscounts shall have been retired, after which offsets as in this section provided shall be allowed.

Deposits of any person, firm or corporation in a bank which is in the possession of the superintendent, may be offset against any indebtedness, (subject to the conditions of the preceding paragraph of this section), except assessments on stock, due to such bank from such person, firm or corporation. All dividends when declared in favor of any creditor of the bank may be applied, in the discretion of the superintendent, in satisfaction of the indebtedness, if any, due the bank from such creditor.

En. Sec. 134, Ch. 89, L. 1927.

Constitutionality of statute relating to preferences, note, 31 A. L. R. 790.

Balance due other banks on clearing-house settlement as preferred claim, note, 44 A. L. R. 1535.

Preference in respect of money used to purchase exchange or to be transmitted, note, 16 A. L. R. 190.

Preference in respect of money deposited for transmission by bank, note, 16 A. L. R. 195.

Preference in respect of money placed in bank for purpose of transaction with third person, note, 31 A. L. R. 472.

Preference in respect of deposits design-

ated for payment of specified obligations, note, 32 A. L. R. 967.

Preference in favor of individuals as to funds deposited by them to credit of public treasurer in attempt to pay taxes, note, 37 A. L. R. 130.

Prerogative right of county or other political subdivision to preference, note, 36 A. L. R. 640.

Waiver of right of government to preference in assets by taking security, note, 24 A. L. R. 1495.

Waiver of state's priority by deposits on interest, note, 42 A. L. R. 1296.

Right of owner of check which the drawee bank held for him at time it

closed its doors to a preference, note, 17 A. L. R. 196.

Right of holder of cashier's check to preference, note, 21 A. L. R. 680.

Right of holder of certified check to preference out of assets of insolvent bank, note, 51 A. L. R. 1034.

Right in absence of statute to preference in respect of deposit of public funds, note, 51 A. L. R. 1336.

Set-off by or against bank or trust company as affected by division of its business departments, note, 16 A. L. R. 1487.

Right of one indebted to insolvent bank to set off deposits which he has made as trustee, note, 5 A. L. R. 83.

Right to set off deposits in insolvent bank against indebtedness to bank, note, 25 A. L. R. 938.

Immaturity of claim at time of insolvency proceedings as affecting right of set-off, note, 43 A. L. R. 1325.

For text treatment of this subject see vol. 4 Cal. Jur. 308.

6014.135. Claims—Partial payments. The superintendent need not await the expiration of the time allowed for filing claims, as fixed in the notice to the creditors, for the payment of dividends, but he may, in his discretion, and if under the circumstances of the particular case he deems it expedient and safe, at any time after taking possession of said bank and prior to the expiration of such period fixed for filing of claims, if he have on hand in cash sufficient funds over and above the expenses of liquidation, make pro rata distribution to any class of creditors next entitled thereto, in the order of priority heretofore fixed, making such payment to said creditors as they appear on the books and records of the bank and determining the priority and basing his apportionment on the amount shown to be due by such books and records. At any time after the expiration of the date fixed for the presentation of claims against said bank and from time to time thereafter, when, in his discretion there are sufficient funds available therefor, the superintendent shall, after making proper provisions for the payment of expenses of liquidation, declare and pay dividends to all creditors of such bank pro rata in the order of their priority. If, after the time fixed for presentation of claims against the bank has expired, it appears that any person, prior to the expiration of said period, or at any other time, has been paid more than the pro rata amount due him as compared with the amounts then paid other creditors, nothing more shall be paid said creditors until such time as the payment made other creditors shall place them on equal footing. In calculating dividends, all disputed claims and deposits shall be taken into account and the amount of dividends upon such disputed claims or deposits shall be held by the superintendent until the justice and validity of such claims or deposits shall have been finally determined. Claims against any bank in process of liquidation may be assigned as a whole, but partial assignments of such claims shall not be valid against the superintendent of banks or his agents in charge of such bank, nor recognized by them. Assignments of claims shall be binding upon the superintendent only after the same have been filed and allowed by the superintendent, but not before, and only then subject to the payment of the assignor's liabilities to the bank. Such assignment shall be made by filing written notice, signed by the original claimant, with the superintendent or person in charge of said bank. No assigned claims may be offset against obligations due the bank. A check or draft drawn against any bank closed or taken possession of by the superintendent, whether issued before or after

closing thereof, shall not be recognized as a claim against said bank, or as an assignment of any amount, whether protested or not protested.

En. Sec. 135, Ch. 89, L. 1927.

6014.136. Deposit of funds in superintendent's hands. All funds in the hands of the superintendent belonging to any bank in process of liquidation shall be deposited in his name as superintendent in such banks within the state as may be selected and designated by him and subject to his checks as superintendent of banks. Said funds to be preferred and protested as in this act provided.

En. Sec. 136, Ch. 89, L. 1927.

6014.137. Disposition of unclaimed funds. The superintendent shall certify to the treasurer of the state a complete list of funds remaining in his hands uncalled for, which have been left in his hands in his official capacity, in trust for depositors in and creditors of any liquidated bank after they have been held by him for six months from the date of the final liquidation of the institution. Along with this certificate, he shall transmit to the treasurer of the state the funds with accumulated interest thereon, which he has so held in trust for six months. A copy of such certificate shall also be filed with the state auditor, who shall make a record thereof.

Any depositor or creditor of a liquidated bank who has not been paid the amount standing to his credit as thus certified to the state treasurer, may apply to the superintendent for the amount due him, after it has been certified into the treasury of the state. The depositor or creditor shall make an affidavit and offer proof of his identity and of the amount due him by the liquidated bank. When satisfied as to the correctness of the claim and of the identity of the person, the superintendent shall approve the claim and forward it to the auditor, who shall audit the same and if found correct issue his warrant payable to the depositor or creditor for the amount shown by the records to be due such depositor or creditor which shall be paid by the treasurer.

En. Sec. 137, Ch. 89, L. 1927.

Constitutionality of statute providing

for escheat of unclaimed bank deposits,
as applied to national banks, note, 31
A. L. R. 399.

6014.138. Disposition of assets remaining after payment of claims. Whenever the superintendent has paid to each and every depositor and creditor of such bank whose claims shall have been duly approved and allowed as herein provided, the full amount thereof, and shall have made proper provisions for unclaimed and unpaid deposits and disputed claims and deposits, and shall have paid all the expenses of liquidation and likewise repaid the stockholders all assessments paid by them under order of the superintendent; or, if the assets of said bank be insufficient for making said payments, then, whenever the superintendent has liquidated all available assets and disbursed the same as herein provided, the superintendent shall make application to the district court of the county in which such bank is located, or to the judge thereof in chambers for an order authorizing the superintendent, if there be remaining assets on

hand, to surrender the same to the directors of said bank in office at the time of closing the same, as trustees for stockholders, or to such other person or persons, if any, as have been designated as trustees by the stockholders at a meeting lawfully called and assembled for such purpose, in like manner as any other stockholders' meeting. Said order shall also provide that upon the surrender of said assets, as in said order directed, and where there are no remaining assets, then, upon the entry of the order, the superintendent shall be discharged from all further liability or responsibility in connection with the assets and affairs of said bank and that the charter of said bank shall be forfeited. The court may require such trustees to give bond in such amount as the court may fix, conditioned for the faithful performance of their duties. It shall be the duty of the said trustee or trustees to complete the liquidation of any remaining assets as rapidly as may be and to distribute the proceeds of the same pro rata among the stockholders, or to dispose of the same in such other manner as the stockholders shall, by a majority vote, at a meeting assembled for that purpose, direct. On application for such order, the bank shall be made a part [party] by notice issued on order of the court or judge, in lieu of summons, but served in like manner, and the hearing of any such application may be had at any time in court or in chambers, as the court may order, after five days' notice of the hearing.

En. Sec. 138, Ch. 89, L. 1927.

6014.139. Bank in voluntary liquidation may proceed—How and when. Banks now in process of voluntary liquidation under the terms of section 6109-E, chapter 90 of the Session Laws of the Eighteenth Legislative Assembly 1923 may continue and complete liquidation of their assets; and chapter 90, section 6109-E, Laws of 1923 and each and every provision thereof shall continue in full force and effect for the purpose of enabling banks now in process of liquidation to complete and continue their liquidation in the manner now therein provided.

En. Sec. 139, Ch. 89, L. 1927.

6014.140. Bank liquidating by receivers. The liquidation of banks now in process of liquidation by receivers appointed by courts of competent jurisdiction, may be continued and concluded in manner and form as now provided by the laws of Montana, and all of the statutes of Montana in effect at the time of the passage and approval of this act are continued in force for the purpose of the liquidation of such banks only, provided that any district court having jurisdiction of any such receivership may at any time after this act takes effect, discharge a receiver and order the liquidation to be continued by the superintendent of banks in accordance with the provisions of this act, relative to the liquidation of banks by the superintendent, except that in such case the assets still remaining undistributed and yet to be paid out must be distributed in manner and form and to the same persons who would have been entitled to the same if no change had been made in the personnel of the liquidating officer.

En. Sec. 140, Ch. 89, L. 1927.

6014.141. Effect of act on existing banks. The powers, privileges, duties, and restrictions heretofore conferred and imposed upon any bank or trust company now existing and doing business under the laws of this state, are hereby abridged, enlarged or modified as each particular case may require to conform with the provisions of this chapter.

En. Sec. 141, Ch. 89, L. 1927.

6014.142. Effect partial invalidity act. If any part or section of this act shall be adjudged by the courts to be unconstitutional or invalid, the same shall not affect the validity of the act as a whole or any part thereof which can be given effect without the part adjudged to be unconstitutional or invalid.

En. Sec. 142, Ch. 89, L. 1927.

6014.143. Punishment. When no other punishment is provided herein, any person wilfully or knowingly violating any of the provisions of this act, shall be deemed guilty of a misdemeanor, and shall be punished by a fine of not more than five hundred dollars (\$500) or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment. The attorney general upon information furnished by the superintendent of banks, shall bring any actions necessary to enforce the provisions of this act.

En. Sec. 143, Ch. 89, L. 1927.

Banking law violation as "infamous offense" within constitutional or statutory provision in relation to presentment

or indictment by grand jury, note, 24 A. L. R. 1007.

For text treatment of this subject see vol. 4 Cal. Jur. 170.

6014.144. Repealing. Sections 6014 to 6085 inclusive, 6088 to 6109 of the Revised Codes of Montana 1921, chapters 9, 84, 90 and 93, Laws 1923, chapters 57, 65, 72, 73 and 98 Session Laws 1925, and all acts amendatory thereof, and all other acts and parts of acts in conflict with the provisions of this act are hereby repealed, except that those parts of chapter 90 of the Laws of 1923, having to do with voluntary liquidation of banks, and those parts of sections 6100 to 6105 inclusive, of the Revised Codes of Montana, 1921, having to do with appointment of receivers of state banks and their duties, shall be continued in effect for such purposes only as hereinbefore provided, and such parts of section 6036 of the Revised Codes of Montana 1921, as amended by chapter 9 of the Laws of 1923 or as may be hereafter amended having to do with liability of stockholders of those banks now being liquidated through a court and the paying and collection of such liability as is therein provided, shall be continued in full force and effect until such bank or banks shall have been fully liquidated.

En. Sec. 144, Ch. 89, L. 1927.

6015. Institutions to which act is applicable.

Rep. Sec. 144, Ch. 89, L. 1927.

Cited in State ex rel. Butte etc. Co. v. District Court, 75 Mont. 567, 577, 244

Pac. 489; First Nat. Bank v. County of Dawson, 66 Mont. 321, 337, 213 Pac. 1097.

6017. Commercial bank defined.

Rep. Sec. 144, Ch. 89, L. 1927.

Sections 6017-6020 were cited in *First Nat. Bank v. County of Dawson*, 66 Mont. 321, 337, 213 Pac. 1097.**6025. Board of directors—Qualifications, tenure, and vacancies.**

Rep. Sec. 144, Ch. 89, L. 1927.

Cited in *In re Lockhart*, 72 Mont. 136, 140, 232 Pac. 183.**6036. Liability of stockholders.**

Rep. Sec. 144, Ch. 89, L. 1927.

The double liability to the creditors of an insolvent state bank imposed by this section, as amended, upon a holder of stock in such bank, is in the nature of a guaranty, and therefore will not support an attachment as upon a contract for the direct payment of money in an action by the receiver to collect an assessment levied upon the stock of a delinquent stockholder. *Muri v. Young*, 75 Mont. 213, 245 Pac. 956.

The double liability imposed by this section, as amended, upon a stockholder in a state banking corporation is in its nature contractual, and in an action to collect an assessment made against him upon that liability, attachment lies as upon an implied contract for the direct payment of money. *Home State Bank v. Swartz*, 72 Mont. 425, 234 Pac. 281.

In an action by the receiver of an insolvent bank commenced under this section to enforce the stockholders' statutory liability, complaint held sufficient to show that the bank was a party defendant in the receivership proceedings, that it was being liquidated by the court, and that its insolvency had been judicially determined. *Springhorn v. Dirks et al.*, 72 Mont. 121, 231 Pac. 912.

The holder of bank stock has no vested right in any particular method or pro-

cedure for enforcing his liability, nor can he object to the adoption of a new method of enforcing it; hence the fact that this section, under which the receiver may commence action against him instead of the creditors, was passed after the bank became insolvent did not prejudice him in any of his rights. *Springhorn v. Dirks et al.*, 72 Mont. 121, 231 Pac. 912.

Where stock in an insolvent state bank is held by an estate in charge of an administrator, the estate is liable for the assessment levied against the stock by order of court, and to entitle the receiver to proceed to collection, under this section he is not required to first present a claim against the estate to the administrator for approval or rejection. *Springhorn v. Dirks et al.*, 72 Mont. 121, 231 Pac. 912.

This section, providing inter alia that the receiver of an insolvent bank may by order of the district court maintain suits in the courts of this state for the recovery of the statutory liability of stockholders, impliedly denies the court jurisdiction to authorize the receiver to institute like actions in courts outside the state, the right to do so existing in the creditors of the bank alone. *Corwin v. Settergren*, 70 Mont. 535, 226 Pac. 522.

6039. Investment of capital of savings banks.

Rep. Sec. 144, Ch. 89, L. 1927.

Cited in *Ellinghouse v. Hansen Packing Co.*, 66 Mont. 444, 450, 213 Pac. 1087.**6043. Business prohibited unless under superintendent of banks.**

Rep. Sec. 144, Ch. 89, L. 1927.

Sections 6043, 6044 were cited in *State ex rel. Butte etc. Co. v. District Court*,75 Mont. 567, 576, 244 Pac. 489; *First Nat. Bank v. County of Dawson*, 66 Mont. 321, 337, 213 Pac. 1097.**6055. Overdraft by officer or employee—Receiving personal profit from loan.**

Rep. Sec. 144, Ch. 89, L. 1927.

Cited in *State v. Rarey*, 72 Mont. 270, 276, 233 Pac. 615.**6069. Reserve requirements.**

Rep. Sec. 144, Ch. 89, L. 1927.

Cited in *State ex rel. Butte etc. Co. v. District Court*, 75 Mont. 567, 576, 244 Pac. 489.

6071. Report of superintendent of banks.

Rep. Sec. 144, Ch. 89, L. 1927.

The "making" of a report by a state bank to the superintendent of banks as required by this section comprehends any and all of the acts therein mentioned necessary to effectuate the purpose of the requirement; the attestation by a director is essential to the completion thereof, and to that extent imposes upon him the duty of making the report, by attesting the report he vouches for the absolute truthfulness of the statements

contained therein, and an indictment charging him with a violation of the statute in so making a false report states a public offense. In *re Lockhart*, 72 Mont. 136, 232 Pac. 183.

This section and sections 182 and 6083 do not expressly or by implication waive the states' preference right over unsecured creditors of an insolvent bank to payment of its deposits. *State ex rel. Rankin v. Madison State Bank*, 68 Mont. 342, 218 Pac. 652.

6073. Special reports to superintendent of banks.

Rep. Sec. 144, Ch. 89, L. 1927.

Cited in *In re Lockhart*, 72 Mont. 136, 140, 232 Pac. 183; *State ex rel. Rankin*

v. Madison State Bank, 68 Mont. 342, 343, 218 Pac. 652.

6075. Reports confidential.

Rep. Sec. 144, Ch. 89, L. 1927.

Sections 6075-6077 were cited in *State v. Cassill et al.*, 70 Mont. 433, 456, 227 Pac. 49.

6077. False statements and entries deemed felony.

Rep. Sec. 144, Ch. 89, L. 1927.

Evidence in a prosecution against the officer of a bank under this section, for wilfully and knowingly making a false report of the bank's condition to the state bank examiner, held insufficient to warrant conviction. *State v. Dahlgren*, 74 Mont. 217, 239 Pac. 775.

Elements of the crime of making a false report to the state bank examiner stated in *State v. Dahlgren*, 74 Mont. 217, 239 Pac. 775.

In a prosecution against bank officials

for making false reports of the bank's financial condition to the superintendent of banks, under sections 6014-6109, this section, prescribing as the penalty imprisonment for a term of not less than one nor more than ten years, and not section 6082 fixing the penalty for a like offense at imprisonment for not more than five years, is controlling. *State v. Cassill et al.*, 70 Mont. 433, 227 Pac. 49.

Cited in *In re Lockhart*, 72 Mont. 136, 141, 232 Pac. 183.

6078. Insolvency or impairment of bank.

Rep. Sec. 144, Ch. 89, L. 1927.

This section was not repealed by implication by the enactment of chapter 90,

L. 1923. *State ex rel. Boone v. Tullock*, 72 Mont. 482, 234 Pac. 277.

6079. Appointment of receiver.

Rep. Sec. 144, Ch. 89, L. 1927.

Cited in *Rohr v. Stanton Trust & Savings Bank*, 76 Mont. 248, 251, 245 Pac. 947.

6079.1. Bank insolvencies—Status claims for public deposits. In the liquidation of the affairs of any insolvent bank, claims for public deposits such as those of the state, county, city or town, shall not be given preference over the other claims against such bank. This act shall not affect any bank now in process of liquidation.

En. Sec. 1, Ch. 132, L. 1925.

Cited as chapter 132, L. 1925, in *State ex rel. Rankin v. Banking Corp.*, 77 Mont. 134, 152, 251 Pac. 151.

Prerogative right of county or other political subdivision to preference, note, 36 A. L. R. 640.

Waiver of right of government to

preference by taking security, note, 24 A. L. R. 1495.

Waiver of state's priority by deposits on interest, note, 42 A. L. R. 1296.

6081. Deposits in insolvent or impaired bank.

Rep. Sec. 144, Ch. 89, L. 1927.

The punishment provided by this section as amended has reference to incorporated banks. State v. Yegen, 74 Mont. 126, 238 Pac. 603.

Held, on habeas corpus, that the Bank Act (chap. 89, L. 1915) as amended by chapter 90, L. 1923 (sec. 6081, Rev. Codes 1921), under which complainant was convicted of accepting deposits when his

bank was insolvent, is not open to the charge of unconstitutionality on the ground that the titles of both the original and the amendatory acts are insufficient to meet the requirements of section 23, article V, of the constitution. State ex rel. Boone v. Tullock, 72 Mont. 482, 234 Pac. 277.

Cited in In re Naegle, 70 Mont. 129, 133, 224 Pac. 269.

6082. Penalty for receiving deposits when insolvent, or making false statements.

Rep. Sec. 144, Ch. 89, L. 1927.

Cited in State v. Cassill et al., 70 Mont. 433, 454, 227 Pac. 49.

6083. Duties of auditor transferred to superintendent of banks—Examination and supervision.

Rep. Sec. 144, Ch. 89, L. 1927.

Cited in State ex rel. Rankin v. Madison State Bank, 68 Mont. 342, 218 Pac. 652.

6085. Fees to be credited to state banking fund.

Rep. Sec. 144, Ch. 89, L. 1927.

Rep. Sec. 2, Ch. 13, L. 1923.

6088 to 6109 inclusive. Relating to changes in the organization of banks—Reports—Insolvencies and liability of banks.

Rep. Sec. 144, Ch. 89, L. 1927.

6095. Unincorporated banks—Designation of name.

Rep. Sec. 144, Ch. 89, L. 1927.

Sections 6095 to 6099 were cited in State ex rel. Butte etc. Co. v. District

Court, 75 Mont. 567, 575, 244 Pac. 489; State v. Yegen, 74 Mont. 126, 139, 238 Pac. 603.

6096. Financial condition required of unincorporated bank.

Rep. Sec. 144, Ch. 89, L. 1927.

Under sections 6096, 6097, 6100 and 6103, private banks have identity apart from the owners thereof. The act of a Montana court in appointing a receiver

for a bank of private parties because of insolvency of the bank was therefore not an act of bankruptcy within the Bankruptcy Act. In re Yegen et al., 1 Fed. (2d) 841.

6097. Private banks subject to inspection by state examiner.

Rep. Sec. 144, Ch. 89, L. 1927.

Cited in State v. Yegen, 74 Mont. 126, 132, 238 Pac. 603.

6098. Information obtained by state examiner to be deemed confidential.

Rep. Sec. 144, Ch. 89, L. 1927.

In a prosecution against the owner of a private bank for receiving deposits at a time when the bank was insolvent,

reports made to the state bank examiner by his deputies as to its financial conditions, not verified or signed, were not admissible in evidence as "public writ-

ings" in the absence of proof of their contents; they were further inadmissible as confidential in character, under this

section. *State v. Yegen*, 74 Mont. 126, 238 Pac. 603.

6099. Reports of private banks.

Rep. Sec. 144, Ch. 89, L. 1927.

Cited in *State ex rel. Rankin v. Madison State Bank*, 68 Mont. 342, 348, 218 Pac. 652.

6100. Report of examiner of impairment of assets of bank.

Rep. Sec. 144, Ch. 89, L. 1927.

Cited in *State v. Yegen*, 74 Mont. 126, 133, 238 Pac. 603. Applied with sections

6096, 6097 and 6103 in *In re Yegen et al.*, 1 Fed. (2d) 841.

6103. Receiver for bank.

Rep. Sec. 144, Ch. 89, L. 1927.

Sections 6103-6106 were cited in *State ex rel. Butte etc. Co. v. District Court*,

75 Mont. 567, 575, 244 Pac. 489; *State v. Yegen*, 74 Mont. 126, 133, 238 Pac. 603.

6107. Receiving deposits by insolvent bank—Making false entries.

Rep. Sec. 144, Ch. 89, L. 1927.

The punishment for receiving deposits in an unincorporated bank when insolvent provided by this section as amended by section 12075 (the Indeterminate Sentence Act), is imprisonment for not less than

six months and no more than five years; section 6081, as amended by chapter 90, L. 1923, providing otherwise, having reference to incorporated banks. *State v. Yegen*, 74 Mont. 126, 238 Pac. 603.

6108. Liability of banks on negotiable instruments forwarded for collection.

Rep. Sec. 144, Ch. 89, L. 1927.

Under this section a bank may send a check deposited with it for collection, directly to the bank upon which it is drawn. *Fergus County v. Federal Reserve Bank*, 75 Mont. 582, 244 Pac. 883.

Under this section a bank doing business in the state and receiving a check for collection may send it for payment

directly to the bank upon which it is drawn, and if it uses due diligence in making the collection—if it does so in the usual course of business—the failure of the bank to which it is sent to account for the proceeds does not render the forwarding bank liable. *Jensen v. Laurel Meat Co.*, 71 Mont. 582, 230 Pac. 1081.

6109. Same—What constitutes due diligence.

Rep. Sec. 144, Ch. 89, L. 1927.

Cited in *Jensen v. Laurel Meat Co.*, 71 Mont. 582, 591, 230 Pac. 1081.

6109D. Assessment on capital stock to make good impairment.

Rep. Sec. 144, Ch. 89, L. 1927.

By provision of this section and a by-law of a state bank, written notice to its stockholders of a special meeting to devise ways and means to make good an impairment of the capital stock of the bank was required to be mailed to their last known places of residence. A notice was mailed to the attorney of a stockholder residing in a city other than that of the latter's residence. The stockholder did not participate in the meeting. Held, that a sale of his stock on non-payment of an assessment levied against

it in pursuance of action taken at the meeting was void. *Home State Bank of Manhattan v. Swartz*, 77 Mont. 566, 252 Pac. 366.

The power given a state bank by this section to sell the stock of its stockholders upon impairment of its capital if the holders fail to pay the assessment levied upon it constitutes a lien upon the stock, within the meaning of the attachment statute. *Home State Bank v. Swartz*, 72 Mont. 425, 234 Pac. 281.

In an action by a state bank to recover a deficiency due on an assessment against

a stockholder after a sale of the stock by it as provided in this section, in which a writ of attachment was issued, the affidavit on attachment held defective for failure to allege, after setting forth that the amount due had not been secured by

any mortgage, lien, etc., that "if originally so secured, such security has, without any act of the plaintiff, become valueless." *Home State Bank v. Swartz*, 72 Mont. 425, 234 Pac. 281.

6109E. Voluntary liquidation.

Rep. Sec. 144, Ch. 89, L. 1927.

Where a bank goes into voluntary liquidation under this section and in acknowledgment of its indebtedness to a general creditor issues to him a certificate entitling him to dividends thereon as they are declared in the course of liquidation, he may not thereafter bring suit to recover the amount of his claim

against the bank, no failure on the part of those in charge of its affairs in carrying forward its liquidation as trustees being shown; and where such an action was brought, a general demurrer to the complaint was properly sustained. *Rohr v. Stanton Trust & Sav. Bank*, 76 Mont. 248, 245 Pac. 947.

CHAPTER 13A.

MORRIS PLAN COMPANIES.

6109.1. Definition. The term "Morris Plan Company" as used in this act means any corporation formed under the provisions of this act.

En. Sec. 1, Ch. 119, L. 1925.

6109.2. Procedure to establish Morris Plan Company. Any number of adult persons, residents and not less than five, may associate to establish a Morris Plan Company under this act. The incorporators shall execute a certificate of incorporation or application for articles of incorporation, which shall be acknowledged by at least three of the subscribers thereto before a notary public, and they shall also make and subscribe an oath or affirmation before him to be indorsed on the said certificate that the said statements therein contained are true. The said certificate accompanied by proof of publication of notice as hereinafter provided shall then be presented to the governor of the state, who shall examine the same and if he finds it to be in proper form and within the purposes named in this act, he shall approve thereof, and indorse his approval thereon, and direct articles of incorporation to issue in the usual form incorporating the subscribers and their associates and successors into a body corporate of the name chosen, and the said certificate shall be recorded in the office of the secretary of the state, in a book to be kept by him for that purpose, and he shall forthwith furnish to the state banking department an abstract therefrom, showing the name, location, amount of capital stock, and the name and address of the treasurer of such corporation; the said original certificate with all its indorsements shall then be recorded in the office for the recording of deeds in and for the county where the business of the corporation is to be carried on, and from thenceforth the subscribers and their associates and successors shall be a corporation for the purposes and upon the terms named in the said charter. Certified copies of such certificate, duly certified by the secretary of this state, shall be conclusive evidence in all courts of this state of the existence of such corporation and of every other matter or thing which could be proved by the production of the original certificate.

En. Sec. 2, Ch. 119, L. 1925.

6109.3. Contents certificate of incorporation. The certificate of incorporation or application for articles of incorporation shall specify:

- I. The name (subject to the approval of the secretary of this state).
- II. Location or place of business, particularly designating the county or city.
- III. Amount of capital stock and number of shares into which divided.
- IV. The names and places of residence of the incorporators, and the number of shares subscribed by each.
- V. A statement that such certificate is made to enable the persons named to form a Morris Plan Company under this act.
- VI. The term for which it is to exist.

En. Sec. 3, Ch. 119, L. 1925.

6109.4. Population necessary—Capital stock. No corporation shall be organized under this act to do business in a city having a population of less than twenty thousand inhabitants, and that such corporation shall have an aggregate amount of capital stock of not less than twenty-five thousand dollars, and a surplus of 10% of the paid in capital stock.

En. Sec. 4, Ch. 119, L. 1925.

6109.5. Shares, how divided. The capital stock of any such corporation shall be divided into shares of the par value of one hundred dollars each. All of the capital stock shall be paid in cash to the treasurer of the corporation, who shall deposit the same in some bank approved by the superintendent of banks, before any such corporation shall be authorized to transact any business other than such as relates to its formation and organization, and such payment shall be certified to the state banking department under oath by the president and manager of said corporation.

En. Sec. 5, Ch. 119, L. 1925.

6109.6. Name. Every corporation incorporated under this act shall be known as a Morris Plan Company, and may use the words "Morris Plan Company" as part of its corporate title.

En. Sec. 6, Ch. 119, L. 1925.

6109.7. Powers. Every corporation formed under the provisions of this act shall, from the date of the charter of incorporation issued thereto, be a body corporate, but shall transact no business except such as may be incidental to the purpose of its organization until all of the capital has been paid in as hereinbefore provided, and shall have the following powers:

I. To have succession by the name designated in its certificate of incorporation, for the term of twenty-five years from the date of the incorporation, unless sooner dissolved.

II. To sue and be sued, to appear and defend in all actions and proceedings under its corporate name and to the same extent as a natural person.

III. To have a common seal and alter the same at pleasure.

IV. To elect or appoint all necessary officers, agents, and servants, define their duties and obligations, fix their compensations, dismiss them, fill vacancies and require bonds.

V. To make, amend and repeal by-laws and regulations, not inconsistent with law, for its own government, for the orderly conduct of its affairs and the management of its property, for determining the manner of calling and conducting its meetings, the tenure of office of the several officers, and such others as shall be necessary or convenient for the accomplishment of its purposes, which by-laws and amendments thereto must be approved by the superintendent of banks.

VI. To lend money and to deduct interest therefor in advance at lawful rates of interest and in addition to require and to receive uniform weekly or monthly installments on its certificates of indebtedness purchased by the borrower simultaneously with the said loan transaction, or otherwise, and pledged with the corporation as security for the said loan, with or without an allowance of interest on such installments, provided, however, that no such corporation shall charge or receive interest in excess of the legal rate of interest provided for in the state of Montana.

VII. To buy, sell, or negotiate bonds, notes and choses in action and to sell or negotiate evidences on certificates of indebtedness or investment of the corporation calling for the payment of money at any time, either fixed or uncertain and to receive payments therefor in installments or otherwise.

VIII. To purchase or otherwise acquire and to sell and negotiate drafts and acceptances drawn in connection with the sale of merchandise on account of the purchase price thereof and to take from the acceptors or holders of such drafts and acceptances as security therefor, with or without other collateral, choses in action or other evidences of indebtedness issued by it and to be paid in uniform monthly, weekly or other periodical installments.

IX. To charge for a loan made pursuant to this action one dollar for each fifty dollars or fraction thereof loaned for expenses incurred in making the loan; no charge shall be collected unless a loan shall have been made.

En. Sec. 7, Ch. 119, L. 1925.

6109.8. Powers relating to deposits. The power conferred upon corporations organized under this act by the foregoing action shall not be construed as authorizing such corporation to receive deposits of money subject to check, payable on demand, or payable unconditionally at a fixed time.

En. Sec. 8, Ch. 119, L. 1925.

6109.9. Restrictions on powers. No Morris Plan Company shall:

(a) Make any loan to one person, firm or corporation for more than ten per centum of the amount of the capital and surplus of such Morris Plan Company.

(b) Make any loan under the provisions of this act for a longer period than one year from the date thereof.

(c) Deposit any of its funds with any other corporation unless such corporation has been designated as such depository by a vote of the majority of the directors, exclusive of any director who is an officer, director or trustee of the depository so designated, present at a meeting duly called at which a quorum is in attendance. Such bank must first be approved by the superintendent of banks as a depository bank for such company.

En. Sec. 9, Ch. 119, L. 1925.

6109.10. Resident directors. At least three-fourths of the directors of any Morris Plan Company shall be residents of the state of Montana.

En. Sec. 10, Ch. 119, L. 1925.

6109.11. Supervision by state banking department. Every corporation incorporated under the provisions of this act shall report to, and be subject to the supervision of the state banking department.

En. Sec. 11, Ch. 119, L. 1925.

CHAPTER 14.

INSURANCE COMPANIES—GENERAL REGULATIONS.

6121. Discrimination prohibited.

Cited in *Robb v. Porter et al.*, 65 Mont. 460, 211 Pac. 210.

6124. Commissioner may suspend licenses—General powers. Whenever it shall appear to the satisfaction of the commissioner of insurance after a hearing before him upon notice, that any company, officer, agent, solicitor or helper has violated any provisions of this act, he shall suspend the license of any such company, officer, agent, solicitor or helper to transact business in this state for a period of sixty (60) days for the first offense, and for a period of from not less than one year to not more than three years in the discretion of the commissioner of insurance, for the second or any additional offenses, and no other license shall be issued to any such company, officer, agent, solicitor, or helper during the period of suspension, as the case may be.

The insurance commissioner is hereby given power to do all things necessary and convenient for carrying into effect the laws of this state governing insurance companies and may from time to time promulgate necessary rules and regulations for the better protection of the insuring public.

Amd. Sec. 1, Ch. 20, L. 1923.

Cited in *Robb v. Porter et al.*, 65 Mont. 460, 211 Pac. 210.

CHAPTER 18.

SURETY COMPANIES.

6207. Execution of official bonds.

Cited in *Stabler v. Porter*, 72 Mont. 62, 232 Pac. 187.

6221. Revocation of license of surety company.

This section provides that where a surety company refuses to pay a judgment against it on a bond furnished by it and fails to take an appeal for ninety days after its rendition, the insurance commissioner shall revoke its license. Such a company did not perfect its appeal from a judgment in an action on a constable's bond until the ninety-fifth day after rendition. Its undertaking on appeal was satisfactory to the judgment creditor. In action by the latter against the insurance commissioner for writ of mandate to compel revocation of the company's license, held that since plaintiff's rights were fully protected and could not

be affected either by the issuance or denial of the writ, and the effect of its issuance would have been the destruction of the company's business in the state without an opportunity to be heard, it not being a party to the action, refusal to issue it was not error. *Stabler v. Porter*, 72 Mont. 62, 232 Pac. 187.

Obiter: Where the license of a surety company is sought to be revoked under this section for failure to pay a judgment rendered against it in an action on a bond furnished by it quo warranto may be resorted to. *Stabler v. Porter*, 72 Mont. 62, 232 Pac. 187.

6236. What bonds may be furnished—Payment of premium. Whenever an official bond is required of any state, county, or city officer, such officer may furnish either a surety company bond, or a good and sufficient individual bond, executed and approved as required by law, or may furnish such other security as may be approved by the person, officer, or board authorized by law to examine and approve such official bond; provided, that where such officer shall furnish a surety company bond, the premium therefor shall be a proper charge against the general fund of the state, county, or city, as the case may be; provided, further, that the provisions of this section, making such premium a charge against the general fund of the state, county, city, town, or municipality shall not be construed to include any deputy, clerk or subordinate officer, where a bond is required to be furnished by the principal or body appointing the same.

Amd. Sec. 1, Ch. 145, L. 1923.

CHAPTER 20.

LIFE INSURANCE COMPANIES.

6258.1. Corporations—Policy-holders to participate in elections. The by-laws of corporations organized in this state for the transaction of the business of life insurance upon the stock plan may provide a plan for policy-holders participating with its stockholders in the election of its directors.

En. Sec. 1, Ch. 8, L. 1923.

6258.2. Revocation of by-laws, when forbidden. Any by-law so adopted at any regular or special meeting of the stockholders may thereafter be extended in its terms, but shall not be curtailed or revoked.

En. Sec. 2, Ch. 8, L. 1923.

6269. Regulation of investments. No life insurance company organized or incorporated under the laws of this state shall invest in or loan upon any shares of stock of any corporation. It may invest or loan its funds and accumulations in or upon government, state, county, or municipal securities, and bonds or obligations amply secured by mortgage, or other adequate collateral security, but when more than one-third of the total value of the collateral security shall consist of shares of stock, it shall be deemed inadequate. No investment or loan, except policy loans, shall be made by any such life insurance company unless the same shall first have been authorized by the board of directors, or by a committee thereof charged with the duty of supervising such investment or loan. No such company shall subscribe to or participate in any underwriting of the purchase or sale of securities or property, or enter into any transaction for such purchase or sale on account of said company, jointly with any other person, firm or corporation; nor shall any such company enter into any agreement to withhold from sale any of its property but the disposition of its property shall be at all times within the control of its board of directors. Any such company, in addition to other investments allowed by law, may invest any of its funds and accumulations in the bonds of the United States or of this state, or any other state of the United States, or of any county, city, town, or village, or duly organized school district therein, or of any municipality or civil division of any state, and may loan upon improved unencumbered real property in any state fifty per cent of the value of such property, or invest in the mortgage bonds of any dividend paying railway or street railway company duly incorporated and organized under the authority of this state or any other state, federal land bank bonds or in the mortgage bonds of any dividend paying industrial or public utility corporation duly incorporated and organized under the authority of the United States or of any state therein, and it may also make loans on the security of promissory notes amply secured by pledge of any bonds in which such insurance companies are hereby authorized to invest their funds, and may also make loans upon the security of its own policies, but no loan on any policy shall exceed the reserve value thereof.

Amd. Sec. 1, Ch. 59, L. 1925.

6280. Contingency reserve. Any life insurance company doing business in this state may accumulate and maintain, in addition to the capital and surplus contributed by its stockholders, and in addition to an amount equal to the net values of its policies, computed according to the laws of the jurisdiction under which it is organized, a contingency reserve not exceeding the following respective percentages of said net values, to wit: When said net values are less than one hundred thousand dollars, twenty per centum thereof, or the sum of ten thousand dollars, whichever is the greater, when said net values are greater than one hundred thousand dollars, the percentage thereof, measuring the contingency reserve, shall decrease one-half of one per centum for each one hundred thousand dollars of said net values up to one million dollars; one-half of one per centum for each additional one million dollars up to ten million dollars; one-half of one per centum for each additional two million five hundred thousand dollars up to

fifteen million dollars; and if said net values equal or exceed the last mentioned amount, the contingency reserve shall not exceed ten per centum thereof; provided, that as the net values of said policies increase and the maximum percentage measuring the contingency reserve decreases, such corporation may maintain the contingency reserve already accumulated hereunder, although for the time being it may exceed the maximum percentage herein prescribed, but may not add to the contingency reserve, when the addition will bring it beyond the maximum percentage; provided, however, that nothing herein contained shall be construed to affect any existing surplus or contingency reserves held by any such corporation, save that whenever the existing surplus and contingency reserves, exclusive of said net values and capital and surplus reserve contributed by its stockholders and of all accumulations held on account of existing deferred dividend policies or groups of such policies, shall exceed the limit above mentioned, it shall not be entitled to maintain any additional contingency reserves; provided further, that for cause shown, the state auditor may, at any time and from time to time permit any corporation to accumulate and maintain a contingency reserve in excess of the limit above mentioned for a prescribed period, not exceeding one year, under any one permission, by filing in his office a decision stating his reasons therefor, and causing the same to be published in his next annual report. This section shall not apply to any corporation doing exclusively a nonparticipating business.

Amd. Sec. 1, Ch. 67, L. 1925.

CHAPTER 22.

FRATERNAL BENEFIT SOCIETIES.

6313. Certificate.

Cited in *Osborne v. Supreme Lodge etc. Ins. Dept.*, 69 Mont. 361, 366, 222 Pac. 456.

CHAPTER 24.

BUILDING AND LOAN ASSOCIATIONS.

6355 to 6374 inclusive. Relating to building and loan associations.

Rep. Sec. 50, Ch. 57, L. 1927.

6355. Organization of association.

Rep. Sec. 50, Ch. 57, L. 1927.

Cited in *First Nat. Bank v. County of Dawson*, 66 Mont. 321, 335, 213 Pac. 1097.

6355.1. Purpose—Definition. A corporation, mutually operated, for the purpose of encouraging home building and thrift among its shareholders and loaning substantially all of its funds to them on real estate mortgage security, shall be known in this act as a building and loan association, and shall be under the supervision of the state examiner and ex-officio superintendent of banks, whose duty it shall be to enforce all laws with respect

thereto. Such associations shall have continual succession and shall be organized under and governed solely by the provisions of this act.

En. Sec. 1, Ch. 57, L. 1927.

NOTE.—This chapter superseded sections 6356 to 6374, Revised Codes of 1921, chapters 108 and 111 of the Session Acts of 1923, and chapters 101 and 104 of the Session Acts of 1925, relating to building and loan associations.

For text treatment of this subject see vol. 4 Cal. Jur. 646.

6355.2. Articles of incorporation—Contents. Whenever any number of persons, not less than five (5), shall desire to incorporate a building and loan association, having for its object the conduct and operation of such an association as defined in this act, they shall prepare and file articles of incorporation to that effect in the manner in this act specified; such articles shall be signed, sealed and acknowledged in the form now provided by the statutes of this state for the conveyance of real estate, and shall include the following:

1. The name of the association. The name shall not be the same as, nor too closely resemble, that in use by any existing corporation established under the laws of this state. The words "Building and Loan Association" shall form a part of the name, and no corporation not organized under this act shall be entitled to use a name embodying said combination of words; provided, that the associations now existing may continue their present names;

2. The principal office, or place of business of the association shall be within this state;

3. The amount of its capital stock and the number of shares into which the same shall be divided; such capital stock shall be divided into shares having a par value of one hundred dollars (\$100).

4. A provision that such association is organized under this act for the purposes herein expressed;

5. The names and residences of the persons who subscribed and acknowledged the said declaration, a majority of whom shall be citizens of this state, and shall thereafter be called incorporators.

En. Sec. 2, Ch. 57, L. 1927.

6355.3. Certified copy of articles prima facie evidence. A certified copy of any articles of incorporation filed in pursuance of this act, must be received in all courts and other places as prima facie evidence of the facts therein stated.

En. Sec. 3, Ch. 57, L. 1927.

6355.4. Evidence of corporate existence or capacity. The certificate issued by the secretary of state in pursuance of section seven of this act, or a certificate issued by the superintendent of banks setting forth that any association, domestic or foreign, has fully complied with the provisions of this act and is lawfully authorized to transact business in this state shall be admitted in evidence in all courts in this state, and shall be prima facie evidence of the corporate character and capacity of such association and of its right to transact business in this state, excepting in an action prosecuted by the state in the nature of quo warranto.

En. Sec. 4, Ch. 57, L. 1927.

6355.5. By-laws. Contemporaneously with or immediately following the execution of said articles of incorporation provided for in section two above, the incorporators then acting in the capacity of directors shall adopt appropriate by-laws to govern and prescribe the methods and the officers by whom the business of the association shall be conducted. The by-laws shall be in conformity with the provisions of this act, and at all times during the regular hours of business shall be open to the inspection of the members at its principal place of business. The by-laws, among other things, shall especially provide for the character and method of conducting the business of the association, with rules governing the addition of members, the sale of its shares, the amount of membership fee; provide for the annual meeting of the shareholders; for the annual election and qualification of directors and for the term or period during which the directors shall serve; provided that the said term or period for all directors shall not be less than one nor more than three years, and that the directors shall be so elected that as near as possible the term of an equal number shall expire each year; for the appointment of officers; for the adoption, ratification and amendment of the by-laws and which adoption, ratification and amendment may be made either by the stockholders or board of directors; for the method of voting at such annual meeting and for the periodical investigation of the business and condition of such association. Provided, however, that no by-laws and no change or amendment thereof shall be effective until first approved by the superintendent of banks, and provided further, that no association shall commence the transaction of business as such until the by-laws are first approved by the superintendent of banks.

En. Sec. 5, Ch. 57, L. 1927.

For text treatment of this subject see vol. 4 Cal. Jur. 650.

6355.6. Capital stock defined—Investigation. The capital stock named in the articles of incorporation shall be deemed to refer to the authorized capital stock and the organization may be completed and business commenced when five per cent thereof is subscribed and not less than twenty-five hundred dollars (\$2500), paid in, in cash and such amount must thereafter be maintained; and provided further that whenever such articles of incorporation are in due form and regularly executed and the by-laws have been duly approved as above required and it shall be made to appear to the satisfaction of the superintendent of banks that five per cent of the authorized capital has actually been paid in cash upon the subscription of shares, the superintendent of banks shall thereupon ascertain from the best sources of information at his command the responsibility, character and general fitness of the incorporators, and that there is a reasonable need for the existence of such an association, and that the public convenience and advantage will be promoted thereby. If the superintendent of banks shall not be satisfied with the result of his investigations of the matters above specified, he shall, within sixty days (60) after said articles of incorporation and by-laws have been presented to him, refuse to issue the certificate hereinafter described. If he shall be satisfied with the result of his said investigations, he shall within sixty days (60) after said articles of incorporation.

and by-laws have been presented to him, issue under his hand, and official seal, a certificate reciting in substance the filing in his office of the articles of incorporation and by-laws; that said articles and by-laws conform to all the requirements of this act; that he has approved the same and that he verily believes that the incorporators are fit and proper persons to conduct the business of a building and loan association as defined in this act and said by-laws and that there is a reasonable need for the existence of said building and loan association, and that the public convenience and advantage will be promoted thereby. Said certificate shall be made in quadruplicate and attached to each copy of the articles of incorporation, one of which shall be retained by the superintendent of banks, the other three shall be returned to the incorporators who shall forthwith file one copy thereof in the office of the secretary of state, one in the office of the clerk and recorder of the county in which the principal place of business of said association is located and the other shall be retained by the association. Immediately upon the receipt of said certified copy, the secretary of state shall issue a certificate of incorporation, whereupon the incorporation of said association shall be deemed complete.

En. Sec. 6, Ch. 57, L. 1927.

6355.7. Directors—Duties. The conduct and management of the affairs and business of such association shall be vested in a board of directors which shall consist of not less than five (5), nor more than nine (9), members. The incorporators of the association shall serve as directors until the first meeting of the stockholders to be held at the time provided for by this act, or until their successors are elected and qualified, after which, the directors shall be elected by the stockholders of the association in accordance with the provisions of this act and the by-laws of the association. The directors, unless it is otherwise provided by the by-laws of the association, shall elect or appoint all the officers of the association. Such directors when appointed or elected shall file with the superintendent of banks their oath of office, as provided in election or appointment of bank directors. Meetings of the board of directors must be held at least once each month.

En. Sec. 7, Ch. 57, L. 1927.

association lends money, note, 3 A. L. R. 1058.

Director's duty to disclose existence of lien or claim against property on which

For text treatment of this subject see vol. 4 Cal. Jur. 652.

6355.8. Removal from office. No director shall be removed from office except as herein provided, or by a vote of the stockholders holding two-thirds of the capital stock, at a general meeting held after previous notice given in the manner provided in section 10 of this act. Meetings of the stockholders for this purpose may be called by the president, or by a majority of the directors, or by stockholders holding not less than twenty-five per cent of the capital stock.

En. Sec. 8, Ch. 57, L. 1927.

6355.9. Meetings of stockholders and directors. (a) The meetings of the stockholders of a Montana building and loan association must be held at its office or principal place of business in this state.

(b) In its by-laws such association shall provide for at least one regular meeting of stockholders annually. Notice of any meeting, whether regular or special, shall be given by the secretary in accordance with section 10 of this act. The board of directors shall have the right to call a special meeting at any time. The board of directors must also call a special meeting whenever petitioned so to do by stockholders owning at least twenty-five per cent of the issued stock. The secretary shall call special meetings in the same manner as provided in section 10 of this act.

En. Sec. 9, Ch. 57, L. 1927.

6355.10. Notice of Meetings. At least thirty (30) days prior to any annual or special meeting of any such association a notice stating the time and place of such meeting shall be deposited in the postoffice at the principal place of business of such association directed to each member at his address, as the same appears at the time on the books of the association, and when so deposited, postage prepaid, shall be deemed a legal and sufficient notice of any such meeting; provided also that in addition thereto notice may be given by four (4), consecutive weekly publications in a newspaper published in the county where the association has its principal place of business. Such publication shall be complete on the day of the fourth publication and in notices of special meetings there shall be attached to and accompanying such notice a statement of any matter or matters to be considered at said meeting. All members of such association shall be entitled to vote at such meetings in person or by proxy.

En. Sec. 10, Ch. 57, L. 1927.

6355.11. Proxies. At least once every year the board of directors of every building and loan association shall, by resolution, direct the secretary of such association and he shall mail to every stockholder of such association a blank form of proxy, and the stockholder shall have the right and privilege of withdrawing his former proxy and of substituting another in its stead. Every proxy shall continue in force and be binding upon the stockholder until such proxy is revoked or another substituted.

En. Sec. 11, Ch. 57, L. 1927.

6355.12. Powers and duties of building and loan associations. Every building and loan association is a creature of the law having certain powers and duties of a natural person and as such has power:

- (1). Of continual succession, by its corporate name.
- (2). To sue and be sued, in any court;
- (3). To make and use a common seal and alter same at pleasure;
- (4). To appoint such officers or agents as the business of the corporation may require, and to allow them suitable compensation;
- (5). To enter into any obligations or contracts essential to the transaction of its ordinary affairs, or for the purposes of the corporation;
- (6). Such association shall have power to issue stock to members on such terms and conditions as the constitution and by-laws may provide, but no association shall issue preferred stock;

(7). To assess and collect from members such dues, fines, interest, fees and premium on loans made, which premium shall not exceed one per centum of the amount of the loan, or other assessment as may be provided for in the constitution and by-laws. The total of such fines, interest, fees or other assessments shall not exceed ten (10) per centum per annum. Fines for nonpayment of dues only shall not be imposed for a longer period than six months (6), against any stock or stockholder. In case of associations operating under a serial plan such fines shall not exceed the total amount of earnings credited;

(8). To permit members to withdraw all or part of their stock credits at such time and upon such terms as the constitution and by-laws may provide; provided, that no charge or fee, except as herein provided, shall be made against any member who withdraws his stock, after having given thirty (30) days' notice of such withdrawal; provided, also, that no fine of any description shall be made upon the par value of such stock or upon the declared dividends because of such withdrawal. Any member who withdraws his stock or whose stock is matured, shall be entitled to receive all dues paid in and all dividends declared less fines imposed for nonpayment of dues, less a reasonable membership fee not exceeding two per cent of the par value of each share of stock and less a pro rata share of all losses, if any, which have occurred, and no other fine or assessments shall be made against such stock. Applications for withdrawals are to be registered on the books of the association in the order received and after outstanding contracts have been provided for, at least one-half of the collections made by the association must be used for the payment of the withdrawals in the order received; provided, however, that if applications for withdrawal are six months old, all collections must be used for payment.

(9). To cancel shares of stock upon which all credits have been withdrawn, or upon which loans have been canceled or stock upon which no payments have been made for a period of six (6) months, by returning to the stockholders all credits, if any, and reissue such shares as new stock.

(10). To issue stock to minors and permit the same to be withdrawn as other stock, and the receipt of such minor shall be valid acquittance if his rights have been fully secured to him.

(11). To acquire, hold, encumber and convey such real estate and personal property as may be necessary for the transaction of its business, or necessary to enforce or protect its securities. Provided, not over ten per cent (10%), of the assets of any association shall be invested in home office buildings, furniture and fixtures. Also ownership of other real property acquired in any manner or for any purpose shall not be held for more than five (5) years, except by permission of the superintendent of banks.

(12). To borrow money, only when necessary not exceeding twenty per cent (20%) of its assets, and issue its promissory note therefor; provided, that the assets and securities of an association shall not be pledged or hypothecated to secure its borrowed money or for any other purpose, without the consent of the superintendent of banks. However, if the superintendent of banks determines that it is advisable to pledge assets in

order that funds may be secured he may authorize such pledging or hypothecation; but in no event shall the margin of security pledged exceed twenty-five per cent (25%) of the funds so borrowed.

(13). To make loans to members on the security of the shares of the association, and also on their notes secured by first mortgages on improved real estate, including suburban homes, but not on farm lands or mining property, for not to exceed sixty-five per centum of the actual value of such real estate, and upon such terms and conditions as may be provided in the constitution and by-laws; provided, however, that in all cases where the promissory note, or other written evidence of the loan made by any building and loan association requires the payment of said loan, or the total aggregate sum of principal and interest in periodic installments, said promissory note, or other written evidence of debt shall specifically state the actual interest rate charged the borrower upon the unpaid balance of the principal amount at each periodic payment; provided, further, that when the note or other evidence of debt does not require the payment of said loan in periodic installments, the note or other evidence of debt shall specifically state the actual rate of interest to be charged the borrower.

Provided, however, that in all notes and mortgages now in force which do not specify the actual rate of interest charged the borrower upon the unpaid balance of the principal at each periodic payment, all payments made on the said notes must be distributed by crediting the same, first, upon the interest on the unpaid balance of the loan at the rate actually earned under the terms of the notes and mortgages, and the remainder upon the principal of the loan, and no charges or deductions from any of said periodic payments shall be permitted by any such association not specifically provided for in said promissory note or other evidence of such loan.

(14). To cancel such loans and release the securities on such as the board of directors may provide. But any borrower may have his loan canceled upon the following terms, to wit: By paying all interest premium and fines for delinquent payments up to the date of cancellation and the sum actually borrowed, less payments on principal dues paid in and the dividends credited.

(15). To invest the money of the association in:

(a) The bonds and securities of the United States;

(b) The bonds and warrants of any state and of any county, city or school district in the state of Montana; and

(c) Not to exceed ten per cent (10%) of the association assets in such other bonds and securities as may be approved by the superintendent of banks.

(16). To loan money to other building and loan associations.

(17). To make such annual or semi-annual distribution of all the earnings after payment of expenses and setting aside a sum for the contingent fund as herein provided.

(18). To amend its articles of incorporation by changing the name, place of business, the number of directors; to increase or decrease the capital stock, by a majority vote of its directors; provided that no such

amendments shall be effective until first approved by the superintendent of banks.

(19). To dissolve the corporation in accordance with the provisions of this act.

(20). To provide by constitution and by-laws, adopted or amended by its board of directors for the proper exercise of the powers herein granted, and the conduct and management of its affairs.

(21). All such other powers as are necessary and proper to enable such corporation to carry out the purpose of its organization.

En. Sec. 12, Ch. 57, L. 1927.

Secretary's authority to indorse and transfer commercial paper, note, 12 A. L. R. 144.

6355.13. Stockholders. The owners of shares in a building and loan association are called stockholders.

En. Sec. 13, Ch. 57, L. 1927.

6355.14. Transfer of stock—Effect. The delivery of a stock certificate of a building and loan association to a bona fide purchaser or pledgee for value, together with a written transfer of the same, or a written power of attorney to sell, assign or transfer the same, signed by the owner of the certificate, shall be a sufficient delivery to transfer the title as against the creditors of the transferor and subsequent purchasers, but no such transfer shall affect the right of the building and loan association to pay any dividend due upon the stock, or treat the holder of record as the holder in fact, until such transfer is recorded upon the books of the building and loan association, or a new certificate is issued to the person to whom it has been transferred.

En. Sec. 14, Ch. 57, L. 1927.

Blue sky laws as applicable to building and loan associations, note, 24 A. L. R. 529.

6355.15. Requirements of transfer in certain cases. When a certificate of stock in a building and loan association is owned by persons residing out of the state, or is lost, the president, secretary or directors of such association, before entering any transfer of such stock on its books, or before issuing a new certificate therefor to the transferee or owner, may require from the attorney or agent of the owner or from the person claiming under the transfer, an affidavit or other evidence that the owner was alive at the date of the transfer or that the original certificate is lost and has not been assigned or transferred, and may also require from the attorney, agent or claimant a bond of indemnity with a surety or sureties satisfactory to the officers of such association, to protect such association against any liability to the owner, assignee or transferee of such shares or the legal representatives of the owners of such shares, in case of his or her death before the transfer, and also to protect such association against any liability accruing or resulting by reason of said lost or original certificate being thereafter presented to it. If such affidavit or other evidence or bond be not furnished when required, as herein provided, neither such association nor any officer thereof shall be liable for refusing to enter the transfer on the books of the association.

En. Sec. 15, Ch. 57, L. 1927.

6355.16. Bonds of officers, agents and employees. All officers, employees and agents of such association who have charge or possession of money, securities, or property, shall give bond before entering upon said duties to the satisfaction of the board of directors and the superintendent of banks for the faithful performance of the same, and the safekeeping and proper application of all moneys or property coming into their hands. All officers of such association, on being re-elected to the office, and all agents and employees upon their re-appointment, shall renew their bonds. The board may be increased or additional security required at any time by the board of directors. Directors shall not be eligible as bondsmen.

En. Sec. 16, Ch. 57, L. 1927.

6355.17. Employment of agents—Licenses and revocation thereof. It shall be unlawful for any building and loan association doing business within the state of Montana to employ any agent for the purpose of soliciting loans and/or the sale of stock in the said association, unless he shall first be licensed by the superintendent of banks to solicit loans and/or sell the stock of said association and no agent representing any association, foreign or domestic, doing business within the state of Montana shall solicit loans and/or the sale of stock of any association unless he shall first be licensed by the superintendent of banks.

No license shall be issued to any applicant for an agent's license until such applicant shall have first filed in the office of the superintendent of banks a written request from the building and loan association desiring to employ him as agent and has made and filed an application therefor upon a form to be prescribed and furnished by the examiner, which must show the applicant's name, business and residence address, community or district in which he wishes to act as agent, the name of the company to be represented, his occupation for the last twelve months and such other information as the superintendent of banks may require. If the superintendent of banks is satisfied that the applicant is a fit and proper person to engage in the solicitation of loans and/or the sale of stock he shall issue the license. The superintendent of banks upon ten (10) days' notice to any agent, and upon hearing thereon, may revoke the license of any agent upon the following grounds:

- (1). For misrepresentation;
- (2). If the said agent be convicted in any court for violation of the criminal statutes;
- (3). When satisfied that said agent is not a fit and proper person to engage in the business of selling building and loan association stock.
- (4). He shall revoke the license of any agent upon the request of such association employing such agent.

Each license provided for in this act shall expire on December 31st of each year, and for the issuance or renewal thereof the superintendent of banks shall require a fee of two dollars (\$2).

En. Sec. 17, Ch. 57, L. 1927.

6355.18. Fund for contingent losses. The amount to be set aside to the fund for contingent losses shall be determined by the board of

directors, but in all permanent or serial associations at least five per cent (5%) of the net earnings shall be set aside each year for such fund until it reaches at least five per cent (5%) of the book value of the stock. All losses shall be paid out of such fund until the same is exhausted and whenever the amount in said fund falls below five per cent (5%) of the book value of the stock as aforesaid, it shall be replenished by annual appropriations of at least five per cent (5%) of the earnings, as hereinbefore provided, until it again reaches said amount.

En. Sec. 18, Ch. 57, L. 1927.

6355.19. Payment of expenses and losses—Dividends. All expenses of any such association shall be paid out of the earnings only; in such manner as may be provided in its by-laws. The charges incident to a loan, if paid by the borrower, shall not be deemed a part of the current expenses.

The portion of the earnings provided in the preceding section shall be reserved annually or semi-annually for the payment of contingent losses and the residue of such earnings shall be transferred as a dividend in such proportion to the credit of all members as the association, by its constitution and by-laws, may provide, to be paid to them at such time and in such manner as will conform with this act and the by-laws of such association. Further losses, should there be any, shall be assessed in the same proportion and manner on all members, to the extent, only, of their stock credits in such association. No further or other charge or assessment, of any kind, can be made against any stockholder.

En. Sec. 19, Ch. 57, L. 1927.

6355.20. Taxation. Every association shall be assessed for and pay taxes upon its office furniture and fixtures and all real estate acquired in the course of its business. The amount standing to the credit of each member of any such association, upon its books, shall be considered and held as the individual credit of each member, and each member shall list the shares held by him for taxation, at their real value in money, in the county of his residence, the same as other credits are listed, except shares from which loans have been made, or money advanced, by the association, and as to such shares they shall be listed for taxation at the net cash value of the stock, to be ascertained by deducting the loan from the cash value of the shares. Associations organized under or controlled by this act shall be subject to taxation in no other way.

En. Sec. 20, Ch. 57, L. 1927.

6355.21. Annual statements. Every building and loan association doing business in this state shall, annually on the thirtieth day of June, or within twenty days thereafter, make a full detailed report, in writing, of the affairs and business of the association for the fiscal year ending on said June 30th, showing its financial condition at the end of said year.

En. Sec. 21, Ch. 57, L. 1927.

6355.22. Form of statement—Where filed. The statement shall be in such form and contain such information as may be prescribed by the

superintendent of banks. It shall be sworn to by the secretary of such association and its correctness attested by at least three directors or an auditing committee appointed by the board of directors. The original shall be filed with the superintendent of banks within twenty days after the close of the fiscal year, and such an abstract thereof as the superintendent of banks may require shall be posted for sixty (60) days in the office or meeting place of such association, and also published once in the newspaper published in the town in which the association is located, or if no newspaper is published in the town in which the association is located, then in one published nearest thereto in the same county, and such proof of publication shall be furnished at such times and in such manner as may be required by the superintendent of banks.

En. Sec. 22, Ch. 57, L. 1927.

6355.23. Duties of superintendent of banks. The superintendent of banks shall examine all building and loan associations doing business in this state at least once a year. Also, whenever ten per cent (10%) of the subscribed stock of any association files a written application with the superintendent of banks, requesting him to make examination of any association, he shall make such examination forthwith, and the expense of the examiner making such examination, including living expenses and transportation, together with a fee of fifteen dollars (\$15) per day for each day actually consumed in the examination shall be paid by the association examined, and the examiner's finding to be available to the petitioners and the board of directors of the association notwithstanding any provisions to the contrary contained in this act. Provided further, that such fee and expense when so collected shall be deposited with the state treasurer for re-appropriation to the current department appropriation of this department.

En. Sec. 23, Ch. 57, L. 1927.

6355.24. Powers of superintendent of banks. Such superintendent of banks shall have power to prescribe for and supervise uniform system of reports, and accounting for all associations; shall have access to and may compel the production of all books, papers, securities and moneys of any association under examination. He shall have power to administer oaths to and examine the officers and agents of such association and its affairs.

En. Sec. 24, Ch. 57, L. 1927.

6355.25. Reports—Contents and publication. Every building and loan association shall make to the superintendent of banks a report of condition whenever requested to do so by the superintendent of banks, according to the form which may be prescribed by him, verified by the oath or affirmation of the president, vice-president, or secretary of such association, and attested by the signature of at least two of the directors. Each such report shall exhibit in detail and under appropriate heads, the resources and liabilities of the association at the close of business on any past day by him specified; and shall be transmitted to the superintendent of banks within five (5) days after the receipt of a request or requisition therefor from him

and in such form as may be required by the superintendent of banks it shall be published as soon as possible in a newspaper published in the place where such association is established, or if there be no newspaper published in the place, then in one published nearest thereto in the same county, at the expense of the association; and such proof of publication shall be furnished at such times and in such manner as may be required by the superintendent of banks.

En. Sec. 25, Ch. 57, L. 1927.

6355.26. Removal of directors, officers or employees. Any director, officer or employee of any association found by the superintendent of banks, after examination, to be dishonest, shall be removed from office by the board of directors of such association on the written order of the superintendent of banks, and if the directors neglect or refuse to remove such director, officer or employee, in event any losses accrue to such association thereafter by reason of the dishonesty of such director, officer or employee, such written order of the superintendent of banks shall be deemed to be conclusive evidence of the negligence of the directors failing to act upon the same as herein provided in any action brought against them, or any of them, for recovery of such losses.

En. Sec. 26, Ch. 57, L. 1927.

6355.27. Fees paid into state treasury. All fees provided for in this act and paid to the superintendent of banks, or secretary of state shall be by them turned into the state treasury for the state examiner's fund.

En. Sec. 27, Ch. 57, L. 1927.

6355.28. Application to other persons, corporations, associations, etc. The provisions of this act shall apply to and be enforceable against all corporations, persons, firms, partnerships, associations, trustees or combinations of persons whatsoever, whether foreign or domestic, and whether citizens of this state or otherwise, that transact, or attempt to transact, a building and loan business, or a business of like kind, or character, or where, by its or their charter, constitution, by-laws or by a declaration of trust, or other device, or by a contract or agreement, the members or customers are required to pay regular installments to a common fund or series, from which fund or series loans are made to said members, customers, or to others for the purpose of building homes or buildings, purchasing building sites, paying off liens or debts against real estate, or for other purposes, within the boundaries of this state. The name association when used in this act shall be deemed to include any of the above named.

En. Sec. 28, Ch. 57, L. 1927.

6355.29. Foreign associations—Requirements. Any association as defined in the foregoing section organized under the laws of any state, other than Montana, or of the United States, or of any foreign government, shall, before doing business within this state, file in the office of the secretary of state and in the office of the superintendent of banks, a duly authenticated copy of their charter, articles of incorporation, or

articles of agreement, and also a statement, verified by oath of the president and secretary of such corporation or managing officials if other than a corporation and duly verified, showing:

1. The name of such association and the location of its principal office or place of business without this state; and the location of the place of business or principal office within this state;

2. The names and residences of the officers, trustees or directors;

3. The amount of capital stock;

4. The amount of capital invested in the state of Montana.

Such association shall also file, at the same time, and in same offices, a certificate, under seal and the signature of its president, vice-president, or other acting head, and its secretary, if there be one, certifying that the said association has consented to all the license laws and other laws of the state of Montana relative to foreign associations and has consented to be sued in the courts of this state, upon all causes of action arising against it in this state, and that service of process may be made upon some person, a citizen of this state, whose name and place of residence shall be designated in such certificate, and such service, when so made upon such agent, shall be valid service on the association.

En. Sec. 29, Ch. 57, L. 1927.

6355.30. Consent of agent. The written consent of the person so designated to act as agent shall also be filed in like manner, and such designation shall remain in force until the filing in the same offices of a written revocation thereof, or of a consent, executed in like manner. A certified copy of a designation so filed, accompanied with a certificate that it has not been revoked, is presumptive evidence of the execution thereof, and conclusive evidence of the authority of the officer executing it.

En. Sec. 30, Ch. 57, L. 1927.

6355.31. Contracts void if made before compliance with act. If any such foreign association shall attempt or commence to do business in this state without having first filed said statement, certificate and consent, required by this act, or without complying with any or all of the laws of Montana relating to the payment of fees or licenses, no contract made by them or any agent or agents thereof, during said time, shall be enforceable by them until the foregoing provisions have been complied with.

En. Sec. 31, Ch. 57, L. 1927.

6355.32. Shares of stock subject to attachment. The stock or shares of such foreign associations, doing business in this state, shall be subject to attachment in the same manner as now provided by law in the case of domestic associations.

En. Sec. 32, Ch. 57, L. 1927.

6355.33. Laws of other states. When by the laws of any other state, territory or nation any taxes, fines, penalties, licenses, fees, deposits of money or securities or other obligations or prohibitions are imposed on building and loan associations of this state, doing business in such other

state, territory or nation, or upon their agents therein, so long as such laws to continue in force the same obligations and prohibitions shall be imposed on the associations of such other state, territory or nation doing, or attempting to do a building and loan business, or a business of like kind or character in this state, and upon their agents herein.

En. Sec. 33, Ch. 57, L. 1927.

6355.34. Conformity required. The powers, rights, duties, privileges and obligation of every such association heretofore and hereafter organized and doing business in the form of a character similar to that authorized by this act, shall be governed, controlled, construed, extended, limited, and determined by the provisions of this act, to the same extent and effect as if said association has been organized and incorporated under or pursuant to its provisions and the articles of incorporation, by-laws and rules of each heretofore made or existing are hereby modified, altered and amended to conform with the provisions of this act and the same are declared void where such articles of incorporation, by-laws or rules are inconsistent with its provisions; except that the obligations of any existing association, whether between such association and its shareholders or any one of them, or any other person or persons, or any valid contract between the shareholders of such association existing at the time this act takes effect, shall not be in any way impaired by the provisions of this act; and with such exceptions every building and loan association shall possess the powers, rights, duties and privileges, and be subject to the obligations, restrictions and liabilities conferred and imposed by this act, notwithstanding anything to the contrary in its articles of incorporation, by-laws or rules. All obligations to any such association heretofore contracted shall be enforceable by it and in its name and demands, claims and rights of action against any such association shall be enforced against it as fully and completely as they might have been enforced before. Except as above set forth, on and after six months after the passage and approval of this act, no domestic or foreign association now engaged in the business of a building and loan association, or a business of like character, shall be permitted to conduct such business in this state unless it comply in every respect with the provisions of this act.

En. Sec. 34, Ch. 57, L. 1927.

6355.35. Penalties. It shall be unlawful for any association, whether foreign or domestic, and whether citizens of this state or otherwise, to do business, or attempt to do business, as defined in this act, without having first complied with its provisions and having received a certificate of authority to do business, from the superintendent of banks. Any such association, violating any of the provisions of this act, and failing to comply with any of its provisions, shall be fined not less than two hundred and fifty dollars (\$250) nor more than one thousand dollars (\$1,000), for each and every such violation, to be recovered by an action in the name of the state, and on collection, paid into the state treasury. Any person or persons, whether citizens of this state or otherwise, who aids or assists any such association to do business contrary to the provisions of this

act, without having first complied with all of its provisions, shall be guilty of a misdemeanor and on conviction thereof shall be fined not more than five hundred dollars (\$500) or imprisoned not more than six (6) months, or both.

En. Sec. 35, Ch. 57, L. 1927.

6355.36. Superintendent of banks' report. The superintendent of banks shall keep and preserve in permanent form a full record of his proceedings, including a concise statement of each association examined, and he shall annually make a report to the governor of the general conduct and condition of the building and loan association doing business in this state, with such suggestions as he may deem expedient. Such report shall also include the information contained in the statement required of the association, and arranged in tabulated form. He shall also report the whole amount of the income of his office, the source whence derived, and the expenses in detail during the year ending on the thirtieth day of June.

En. Sec. 36, Ch. 57, L. 1927.

6355.37. Obtaining property by fraud, false report, refusal to permit inspection of books. A director, officer, agent, or employee of any building and loan association who:

(1) Wilfully receives or possesses himself of any of its property, otherwise than in payment for a just demand, and with intent to defraud, omits to make or cause or direct to be made a full and true entry thereof in its books and accounts; or

(2) Concurs in omitting to make any material entry thereof; or

(3) Wilfully makes or concurs in making or publishing any written report, exhibit or statement of its affairs or pecuniary condition, containing any material statement which is false; or

(4) Having the custody or control of its books, wilfully refuses or neglects to make any proper entry in the books of such association as required by law, or to exhibit, or allow the same to be inspected and extracts to be taken therefrom by the superintendent of banks, his chief deputy, or any of his examiners, shall be guilty of a felony.

En. Sec. 37, Ch. 57, L. 1927.

6355.38. Purchase of obligations of association by officer. No director, officer, agent or other employee of any building and loan association shall, directly or indirectly, for his own personal benefit, purchase, or be interested in the purchase of any obligation of said association for a less sum than shall appear upon the books of such association to be the value thereof. Every person violating the provisions of this section shall, for each offense, forfeit to the state three times the face value of any such obligation so purchased.

En. Sec. 38, Ch. 57, L. 1927.

6355.39. Purchase of assets of association by officer. No officer, director, agent, or other employee of any association shall, directly or indirectly, for his own personal benefit, purchase, or be interested in the

purchase of any of the assets of any building and loan association for a less sum than the book value thereof. Every person violating any provision of this section, shall, for each offense, forfeit to the state twice the nominal value of any such asset so purchased.

En. Sec. 39, Ch. 57, L. 1927.

6355.40. Calculation of profits. Interest or commissions unpaid, although due or accrued, on debts owing to any building and loan association, shall not be included in calculation of its profits.

En. Sec. 40, Ch. 57, L. 1927.

6355.41. Limitation on loans. The total liabilities of any person, co-partnership, or corporation to any association for money borrowed, however secured, including in the liabilities of a copartnership, the liabilities of the several members thereof, shall at no time exceed twenty per centum of the amount of the assets of such association.

En. Sec. 41, Ch. 57, L. 1927.

6355.42. Joint ownership. Any building and loan association may issue shares to or in the name of two or more persons, whether husband and wife or otherwise; withdrawal by any one of such persons, and the receipt or acquittance of any one of such persons shall be valid and sufficient to release and discharge to the association for such withdrawals, regardless of the death or disability of any other such joint shareholder.

En. Sec. 42, Ch. 57, L. 1927.

6355.43. Trusts—Payment. Whenever any shares of stock shall be purchased in any building and loan association by any person in trust for another, and no other or further notice of the existence and terms of a legal and valid trust shall have been given in writing to the association, in the event of the death of the trustee, the same, or any part thereof, together with the interest or dividends thereon, may be paid to the person for whom said shares were purchased.

En. Sec. 43, Ch. 57, L. 1927.

6355.44. Shares held by minor. Whenever any shares of stock in any building and loan association shall be purchased by or in the name of any minor, the same shall be held for the exclusive right and benefit of such minor, and free from the control or lien of all persons whatsoever, except creditors, and shall be paid, with any interest due thereon, to the persons in whose name the shares of stock shall have been purchased, and the receipt of such minor shall be sufficient release or discharge for such shares of stock to the association.

En. Sec. 44, Ch. 57, L. 1927.

6355.45. Reports confidential. Whoever, being the superintendent of banks, a deputy, assistant or clerk in his employ or an examiner, fails to keep secret the facts and information obtained in the course of an examination, or by reason of his official position, except when the public duty of such officer requires him to report upon or take official action regard-

ing the affairs of the association so examined, or wilfully makes a false official report as to the condition of such association, shall be removed from office and shall be fined not more than five hundred dollars or, imprisoned in the penitentiary not less than two years nor more than five years, or both. Nothing in this section shall prevent the proper exchange of information relating to building and loan associations and the business thereof, with the representatives of building and loan departments of other states, but in no case shall the private business or affairs of any individual, association or company be disclosed.

En. Sec. 45, Ch. 57, L. 1927.

6355.46. Checking accounts prohibited. No building and loan association shall carry any demand, commercial or checking account, or receive any sum of money on deposit.

En. Sec. 46, Ch. 57, L. 1927.

6355.47. Voluntary liquidation and settlement. By and with the consent of the superintendent of banks any association organized under the laws of and doing business in this state, may, if the stockholders deem it advisable, go into liquidation, and for the purpose of so doing may, at any regular or called meeting of the stockholders, adopt a resolution declaring that such association intends to go into liquidation and discontinue business as a building and loan association. A copy of such resolution, duly certified by the president and secretary of such association, under the seal thereof, shall be transmitted to the superintendent of banks within ten (10) days after the passage thereof. Thereupon the superintendent of banks shall issue his certificate reciting that such resolution has been filed in his office, and that such association is in liquidation. After the filing of such notice, it shall not be lawful for such association to issue stock, or to loan or advance its money to members or to any other person or persons, but all of the income and receipts of such association, in excess of the actual expense of managing the same, shall be applied to pay off first the indebtedness and then the stock in such association upon which no loans have been made, the same to be paid pro rata. The board of directors of such association in liquidation may adopt such rules and make such orders as shall be just and equitable for the sale and disposition of all property held by such association and for the division of the assets of such association. Such association in liquidation, shall be subject to examination and under the supervision of the superintendent of banks.

En. Sec. 47, Ch. 57, L. 1927.

6355.48. Insolvency or impairment of building and loan association. Whenever it shall appear to the superintendent of banks that the affairs of any building and loan association are in an unsound condition, or that it is conducting its business in an unsafe or unlawful manner, the superintendent of banks may take possession of all books, records and assets of every description of such association and hold and retain the possession of same pending the further proceedings herein specified. Should the board of directors, secretary or person in charge of such asso-

ciation refuse to permit the superintendent of banks to take possession as aforesaid, the superintendent of banks shall communicate such fact to the attorney general, whereupon it shall become the duty of the attorney general at once to institute such proceedings as may be necessary to place the superintendent of banks in immediate possession of the property of such association. Upon taking possession of the effects of the association as aforesaid, the superintendent of banks shall prepare a full and true statement of the affairs and condition of such association, including an itemized statement of its assets and liabilities and shall receive and collect all debts, dues and claims belonging to it and pay the immediate and reasonable expenses of his trust. When the condition of such association has been fully ascertained and it shall appear that the affairs of said association are in fact in an unsound condition, the superintendent of banks shall at once notify, in writing, the board of directors of such association of his decision, giving them twenty (20) days in which to restore the affairs of such association to a sound condition. Meanwhile, the superintendent of banks shall remain in charge of the books, records, and assets of every description of such association, attend, or be represented, at all directors and stockholders meetings held, suggest such steps as he may deem necessary to restore such association to a sound condition; and if same is not done within such twenty (20) days, he shall report the facts to the attorney general and it shall thereupon become the duty of the attorney general to institute proceedings in the district court of the county in which such association has its principal place of business, for the appointment of the superintendent of banks as receiver and as such he is authorized to collect all moneys due such association and to do such other acts as are necessary to conserve its assets and business, and he shall proceed to liquidate its affairs. He shall have general and inclusive power and authority, except as otherwise limited by the terms of this act, to do any and all acts, to take any and all steps necessary, or, in his discretion, desirable for the protection of the property and assets of such association and the speedy and economical liquidation of its assets and affairs and the payment of its creditors, or for the reopening and resumption of business of said association where that is practicable or desirable. He may institute in his own name as superintendent of banks, or in the name of the association, such suits and actions and other legal proceedings as he deems expedient for such purposes, and by making application to the district court of the county in which such association is located, or to the judge thereof, in chambers, may, upon proper and sufficient showing of cause therefor, procure an order to sell, compromise or compound any bad or doubtful debt or claim, and to sell and dispose of any or all the assets, which sale may be made to stockholders, officers, directors, or others interested in such association, on consent of the court. On such proceedings the association shall be made a party by notice issued on order of the court or judge, in lieu of summons, but served in like manner, and the hearing of any such application or petition by the superintendent of banks may be had at any time, either in term or vacation in court, or in chambers, as the court may order, after said association has had five (5) days' notice of such application.

En. Sec. 48, Ch. 57, L. 1927.

comes insolvent before stock matures, note, 50 A. L. R. 533.

Basis of settlement between borrowing member and association which be-

For text treatment of this subject see vol. 4 Cal. Jur. 692.

6355.49. Fees of secretary of state—Superintendent of banks. Section 145 of the Montana Revised Code of 1921, and section 221 of said code as amended by chapter 236 of the Laws of the 18th Legislative Assembly and as amended by chapter 98 of the Laws of the 19th Legislative Assembly, relating to the fees of the secretary of state and state examiner, are hereby made applicable to the fees to be paid by all of the associations mentioned and described in this act.

En. Sec. 49, Ch. 57, L. 1927.

6355.50. Repeal. Sections 6355 and 6358 as amended and all of sections 6356, 6357, 6359, 6360, 6361, 6362, 6363, 6364, 6365, 6366, 6367, 6368, 6369, 6370, 6371, 6372, 6373 and 6374 of the Revised Codes of Montana of 1921, sections 1, 2 and 3 of chapter 108 and sections 1, 2, 3 and 4 of chapter 111 of the Session Laws of the 18th Legislative Assembly and sections 1, 2 and 3 of chapter 101 and sections 1, 2 and 3 of chapter 104 of the Session Laws of the 19th Legislative Assembly and all acts and parts of acts in conflict herewith are hereby repealed, provided, however, that the repeal of each and all of the provisions of said acts or any one of them will not invalidate or affect any contract entered into by any such association or affect any obligation from or to such association which exists or have accrued prior to the passage and approval of this act and such are continued in full force and effect and may be enforced according to the provisions of the laws existing when the same accrued.

En. Sec. 50, Ch. 57, L. 1927.

6355.51. Effect partial invalidity act. If any section, sentence, clause, or phrase of this act is for any reason held to be unconstitutional or invalid such decision shall not affect the validity of the remaining portions of the same.

The legislative assembly of the state of Montana hereby declares that it would have passed this act irrespective of the fact that any one or more sections, sentences, clauses, or phrases may be declared unconstitutional or invalid.

En. Sec. 51, Ch. 57, L. 1927.

6358. Powers of such corporation.

Rep. Sec. 50, Ch. 57, L. 1927.

Building and loan associations are not banking institutions in any sense of that term, and do not in their lawful transac-

tion of business come into any possible competition with national banks. First Nat. Bank v. County of Dawson, 66 Mont. 321, 213 Pac. 1097.

6359. Rights of withdrawing members.

Rep. Sec. 50, Ch. 57, L. 1927.

Cited in First Nat. Bank v. County of Dawson, 66 Mont. 321, 213 Pac. 1097.

6363. Taxation.

Rep. Sec. 50, Ch. 57, L. 1927.

Cited in *First Nat. Bank v. County of Dawson*, 66 Mont. 321, 335, 213 Pac. 1097.

CHAPTER 25.**CO-OPERATIVE ASSOCIATIONS.****6375. Incorporation of co-operative associations.**

Sections 6375-6396 were cited in *Anderson v. Equity Co-operative Assn.*, 67 Mont. 291, 292, 215 Pac. 802.

6379. Powers of such associations.

Cited in *Anderson v. Equity Co-operative Assn.*, 67 Mont. 291, 294, 215 Pac. 802.

CHAPTER 27.**CO-OPERATIVE MARKETING ACT.**

6445. Annual report. Each association formed under this act shall make an annual report to the commissioner of agriculture on forms furnished by him, setting forth the name of such association, its principal place of business; a statement of its business operations during the period covered by such report, showing the amount of capital stock paid up and the number of stockholders of a stock association or the number of members and amount of membership fees received if a nonstock association; the total expenses of operations; the volume of business transacted; the amount of its indebtedness or liability; and its balance sheets.

Amd. Sec. 1, Ch. 144, L. 1923.

6449.1. Recording marketing agreements. Any co-operative marketing association organized under the laws of this state, or doing business in this state pursuant to the laws of this state, may file for record its marketing agreements covering livestock, increase, wool, and other livestock products as hereinafter provided.

En. Sec. 1, Ch. 34, L. 1927.

6449.2. Agreements, how executed. Such agreements shall be eligible for filing for record without being acknowledged before a notary public or other officer, or without any affidavit of good faith or other formality, but shall be signed by the member of the association, and in the name of the association, by a duly authorized officer of the association, and the corporate seal of the association shall be affixed.

En. Sec. 2, Ch. 34, L. 1927.

6449.3. Where filed. Such agreements shall be filed in the office of the county clerk and recorder in the county where such livestock or livestock product is located on the date such agreement is so filed for record.

En. Sec. 3, Ch. 34, L. 1927.

6449.4. Constructive notice of record. Such recordation shall operate as constructive notice of the agreement and of the rights of the association and of its successors and assigns, as specified in the agreement and in this act.

En. Sec. 4, Ch. 34, L. 1927.

6449.5. Record to convey full title when. In case such marketing agreement specifies that the member has agreed to sell, and the association has agreed to buy, the product specified in the agreement, produced by or for such member during a period of time in said agreement designated; and such agreement further provides that the association shall have the absolute title to such product, and the right to enforce specific performance of the agreement, and the power to borrow money thereon for any purpose of the association, and that the association shall have all rights of ownership of such product without limitation, including the right to sell or pledge for its own account, or as security for its own debts or otherwise, then such agreement, when so filed for record, shall operate to convey and transfer to such association full title to and possession of such product covered thereby, and any possession by the member thereafter shall be only as custodian for such association. It is further provided that such agreement shall not apply or constitute any lien or encumbrance on any product derived subsequent to the term therein specified, and no release or satisfaction of such an agreement need be filed for record.

En. Sec. 5, Ch. 34, L. 1927.

6449.6. Assignment of security — Record — Acknowledgment. It is further provided that such association shall have full power to transfer and assign all of its rights under such co-operative marketing agreement, containing the provisions specified in the preceding section hereof, as security for loans obtained by it. Such transfer and assignment may be by indorsement on the marketing agreement so filed for record, or may be made by separate document which shall adequately describe the said marketing agreement, or the various agreements, covered thereby. Any such assignment shall be eligible for record in the same manner as is herein provided for recording of co-operative agreements. Such assignments need not be acknowledged before a notary public or other officer, nor contain any affidavit of good faith or other formality, but shall be signed in the name of the association by a duly authorized officer of the association and the corporate seal of the association shall be affixed. The assignee under any such assignment shall be subrogated to all the rights of the association under said co-operative marketing agreements, and the provisions of this act.

En. Sec. 6, Ch. 34, L. 1927.

6449.7. Fees—Index. The fees payable to the county clerk and recorder shall be as follows: Fifty cents for each agreement so filed for record; fifty cents for each certificate of prior liens and mortgages; fifty cents for certifying to copy of marketing agreement so filed for record; fifty cents for each assignment which is filed separate from the

marketing agreement or agreements covered thereby. The county clerk and recorder shall index such agreements and assignments in the index of chattel mortgages.

En. Sec. 7, Ch. 34, L. 1927.

CHAPTER 29.

INCORPORATION OF RELIGIOUS, SOCIAL AND BENEVOLENT CORPORATIONS.

6453. Churches, charities, benevolent and fraternal societies. Associations or persons where pecuniary profit is not the object, for the purpose of establishing and conducting churches, hospitals, lyceums, musical and scientific societies, libraries, lodges of Free and Accepted Masons, Independent Order of Odd Fellows, Independent Order of Good Templars, granges of Patrons of Husbandry, and all other associations, societies, and orders of like character, and social clubs and agricultural societies, stock-growers' associations, and other associations of like character, including local, independent, and subordinate organizations, as well as state, respectively, supervisory, governing, and grand organizations and bodies of any such associations, society, or order, or for the purpose of establishing public or private charities or both, or for any other lawful purpose, may become incorporated upon complying with the provisions of this chapter.

Amd. Sec. 1, Ch. 112, L. 1923.

For text treatment of this subject see vol. 22 Cal. Jur. 777.

6454. Incorporation of religious or benevolent society. It shall be lawful for any such association or persons as provided in the preceding section at any regular meeting thereof, or at a special meeting for that purpose called, to adopt, by a vote of two-thirds of the members thereof then present, a resolution to the following effect:

"Resolved. That the trustees of this (church, synod, presbytery, conference, assembly, lodge, grand lodge, or other association, as the case may be), to wit: (A, B, C, D, etc., giving the names of the duly elected trustees or directors) be and are hereby authorized to incorporate this (church, synod, presbytery, conference, assembly, lodge, grand lodge, or other association, as the case may be), and for that purpose to file with the proper officer articles of incorporation as required by law." The trustees or directors named in such resolution must conduct the affairs of the corporation so formed until their successors are elected and qualified. In case two or more of the associations mentioned in this chapter own or are desirous of owning real or personal property conjointly, and managing the same conjointly, where pecuniary profit is not the object, they may each, by resolution adopted in the same manner as hereinabove provided in this section, instruct their trustee or director, or trustees or directors respectively, to act in conjunction in incorporating under the provisions of this chapter and in the articles of incorporation, or in their respective by-laws, may provide for the annual election of the trustees of the corporation who shall succeed those named in the articles of incorporation. In case three or more persons are desirous of forming a corporation under the provisions of this act for charitable or benevolent

purposes and where pecuniary profit is not the object, they may by resolution adopted and prescribed by them set forth the purposes and objects of such benevolent corporation designating the number and term of the trustees and authorize the trustees named in such resolution to file articles of incorporation as provided in this act.

Amd. Sec. 2, Ch. 112, L. 1923.

6455. Number of directors—Articles of incorporation—Powers. The trustees or directors, of whom there must not be less than three and not more than thirteen in the aggregate, named in such resolution or resolutions, may thereupon make, file, and record in the office of the county clerk of the county where such association or associations is or are located, if such association or associations be local or subordinate associations, or in the office of the secretary of state, if such association be a state, representative, supervisory, governing, or grand organization or body, articles of incorporation, and must attach to such articles a copy of the resolution or resolutions provided for in the preceding section, certified to by the president or other presiding officer, and the secretary or other recording officer of such meeting or other meetings. In lieu of the requirements of section 5905, of this code, such articles of incorporation must contain the following:

1. The name of the corporation.
2. The purpose for which it is organized.
3. The number of trustees or directors for the first year of the corporate existence of such incorporation.

Corporations so organized may have continual succession, have a common seal, elect all necessary officers, adopt by-laws not inconsistent with law, and enforce the same by appropriate penalties, and have the same rights as other corporations in prosecuting and defending suits at law; may take and hold by purchase, gift, devise, or bequest, either real or personal property or both, or carry out the obligations or provisions of any trust imposed by will or deed of trust, or otherwise, where the trust is created for any charitable purpose, public or private, and where the same is not repugnant to any law of this state, or may give away, or otherwise dispose of, any property of any kind for the purposes of dispensing charity either public or private or for any helpful, worthy or lawful object contemplated by the provisions of this act, and may use or dispose of any property of any kind for the purposes only for which such corporation was formed.

Amd. Sec. 3, Ch. 112, L. 1923.

CHAPTER 31.

CEMETERY ASSOCIATIONS.

6469. Formation of association—Trustees.

This and the following sections were cited as sections 4237-4270, Revised Codes, in *Forestvale C. Assn. v. Helena C. Assn.*, 62 Mont. 52, 56, 203 Pac. 359. For text treatment of this subject see vol. 4 Cal. Jur. 1001.

6472. Effect of filing certificate—Powers of corporation—Eminent domain.

Cited as chapter 99, L. 1911, in *Forestvale C. Assn. v. Helena C. Assn.*, 62 Mont. 52, 57, 203 Pac. 359.

6485. Funds—To what purposes to be applied.

Cited as chapter 65, L. 1919, in *Forestvale C. Assn. v. Helena C. Assn.*, 62 Mont. 52, 57, 203 Pac. 359.

6488. Permanent improvement fund.

Cited as chapter 128, L. 1909, in *Forestvale C. Assn. v. Helena C. Assn.*, 62 Mont. 52, 57, 203 Pac. 359.

6489. Trustees of fund—Appointment and powers. Whenever moneys to the amount of one hundred dollars shall have been received by such corporation, or association, heretofore or hereafter formed, such a fund, either from the sales of lots or from direct payments of such corporation or association towards such a fund by lot owners, or otherwise, the trustees of such association shall immediately make application to the judge of the district court for the judicial district in which the cemetery for which such trust fund exists for the appointment of a board of trustees of such fund, and the judge of such court shall thereupon appoint said board of trustees from a list submitted to him by the trustees of such association. Such board shall consist of not less than three or [nor] more than five persons, the exact number to rest in the discretion of the said trustees of said association. Such trustees of such fund must be citizens and freeholders of the state of Montana, during all the time they exercise the powers of such trust. Upon the election, appointment, and qualification, as hereinafter provided, of the said trustee of such fund, all the title to the funds included in said trust, and all the rights, powers, authorities, franchises, and trusts of whatsoever thereunto appertaining, shall at once vest in them; or, in case of the failure of any of those so chosen and appointed, to qualify within thirty days after their appointment, then the same shall vest in the one or more who shall qualify. In case of the failure of any of those so chosen and appointed so to qualify within such time, then a vacancy shall exist and the judge of said district court shall forthwith appoint from a list submitted to him by the trustees of such association some person possessing the above qualifications to fill vacancy or vacancies in said board of trustees of such fund; provided, however, that trustees of such fund, heretofore appointed by such cemetery associations, or district courts, shall continue to hold their office as such trustees until terminated in one of the manners in this act provided.

Amd. Sec. 1, Ch. 68, L. 1925.

6490. Tenure of office of trustees. The tenure of office of trustees of such fund shall be for life unless they permanently remove from the state of Montana, or are removed from office by the judge of said district court for a good cause shown, or their tenure is otherwise terminated as in this act provided.

Amd. Sec. 2, Ch. 68, L. 1925.

6492. Vacancies, how filled. In the case of the death, resignation, disability, or removal of any member or members of said board of trustees of said fund the judge of said district court shall forthwith

appoint a trustee or trustees to fill such vacancy or vacancies, in the same manner as above provided in the case of an original vacancy.

Amd. Sec. 3, Ch. 68, L. 1925.

6494. Powers of district court. In the case of the failure of the trustees of such an association to make application to the judge of said district court for the appointment of a board of trustees of such fund, as provided in section 6489, or in case of the death, removal, resignation, or disability of all the members of such board, the said rights, titles, interest, authority, powers, franchise, and trusts, until the appointment and qualification of a new board of trustees of such fund shall vest in the district court of the county in which such cemetery, or the greater part thereof, shall be situated. In such cases such boards of trustees of such fund shall be appointed by the district court of said county on application of any person interested, on notice to such other persons interested as the judge of said court may order. The trustees appointed by the judge of said court, under the provisions of this section, shall have the same rights, powers, authorities and franchise as trustees appointed under other sections of this act. The district court shall have power to compel an accounting of such fund and its income from the cemetery association or the trustees of said fund, upon the application of any interested party. Any owner of an interest in any lot of the cemetery cared for by such trust, any trustee of the cemetery association, and any trustee of the said trust fund, shall have the right to make any application to the court provided for in this chapter.

Amd. Sec. 4, Ch. 68, L. 1925.

CHAPTER 32.

RAILROAD CORPORATIONS—GENERAL POWERS AND DUTIES.

6507. Powers of railroad corporations.

Under the common-law rule of liability for the obstruction of surface waters, in force in this state in the absence of statute providing otherwise, defendant railway company was not liable for damage caused to plaintiff's property by surface waters which were dammed up by its embankment and for the escape of which it had failed to construct culverts or openings, its duty in this respect being confined, by subdivision 5 of this section

and section 6599, to providing outlets for streams, watercourses, etc., intersected by the embankment, plaintiff's evidence having failed to establish that the invading waters were conveyed through a natural watercourse. *Le Munyon v. Galatin Valley Ry. Co.*, 60 Mont. 517, 199 Pac. 915.

For text treatment of this subject see vol. 22 Cal. Jur. 286.

6521. Regulations.

Failure of the defendant to comply with the statute requiring the blowing of the whistle and sounding the bell on

approaching a crossing is negligence per se. *Stroud v. Chicago etc. Ry. Co.*, 75 Mont. 384, 393, 243 Pac. 1089.

CHAPTER 33.

LEASES, SALES AND MORTGAGES OF RAILROAD EQUIPMENT AND ROLLING STOCK.

6537. Conditional sale of equipment. In any contract for the sale of railroad or street-railway equipment or rolling stock, it shall be lawful to agree that the title to the property sold or contracted to be sold, although possession thereof may be delivered immediately, or at any time or times subsequently, shall not vest in the purchaser until the purchase price shall be fully paid, or that the seller shall have and retain a lien thereon for the unpaid purchase money, and in any contract for the leasing or hiring of such property, it shall be lawful to stipulate for a conditional sale thereof at the termination of such contract, and that the rentals or amounts to be received under such contract may, as paid, be applied and treated as purchase money, and that the title to the property shall not vest in the lessee or bailee until the purchase price shall have been paid in full, and until the terms of the contract shall have been fully performed, notwithstanding delivery to and possession by such lessee or bailee; provided, that no such contract shall be valid as against any subsequent judgment creditor, or any subsequent bona fide purchaser for value and without notice unless:

1. The same shall be evidenced by an instrument executed by the parties, and duly acknowledged by the vendee, or lessee, or bailee, as the case may be, or duly proved, before some person authorized by law to take acknowledgment of deeds, and in the same manner as deeds are acknowledged or proved;

2. Such instrument shall be filed for record in the office of the secretary of state of this state, and in cases in which the line of such railroad or street railway company lies wholly within one county, also in the office of the county clerk and recorder of said county.

3. Each locomotive engine or car so sold, leased, or hired, or contracted to be sold, leased, or hired as aforesaid, shall have the name of the vendor, lessor, or bailor, plainly marked on each side thereof, followed by the word "owner," or "lessor," or "bailor," as the case may be.

Amd. Sec. 1, Ch. 148, L. 1923.

CHAPTER 34.

LIABILITY OF RAILROADS FOR KILLING OR INJURING LIVESTOCK.

6540. Fences and cattle-guards.

Where injury to livestock was not occasioned by reason of the nonexistence of a fence inclosing defendant railway company's tracks, but, as alleged in the complaint, was caused by its employees in driving them away from the tracks into an inclosure where there was no water, the complaint in so far as it relied upon failure to fence did not state a cause of action under this section. *Fa-ber v. Northern Pacific Ry. Co. et al.*, 77 Mont. 446, 251 Pac. 546.

Under this section a railroad company which fails to maintain sufficient cattle-guards is not liable for the value of livestock killed or maimed on its right of way unless the complaint alleges and the proof shows that the killing or maiming was done by its engines or cars, and the absence of such an allegation renders the complaint insufficient. *Hunt v. White Sulphur Springs etc. Ry. Co.*, 63 Mont. 508, 208 Pac. 917.

This section making it incumbent upon

railroads to maintain good and legal fences on both sides of their track and property, impliedly excepts highway crossings, at which, however, they must install cattle-guards made effective by wing fences on both sides of the highway. *Bowers v. Chicago etc. Ry. Co.*, 61 Mont. 200, 201 Pac. 825.

Railroad tracks at depot and station grounds where passengers and freight are received and discharged, where employees are required to pass continuously back and forth, and where public convenience requires free and unobstructed access, are impliedly excepted from the requirements of fencing made by this section. *Bowers v. Chicago etc. Ry. Co.*, 61 Mont. 200, 201 Pac. 825.

Duty of railroad to fence track for protection of animals within limits of municipality, note, 16 A. L. R. 933.

Failure to fence as rendering railroad company liable for damages to or by livestock after leaving right of way, note, 24 A. L. R. 1057.

Employment of independent contractor as affecting employer's liability under legal provisions requiring railroad to maintain fences or cattle-guards, note, 23 A. L. R. 992.

Dogs as within contemplation of statutes as to duty of railroads to fence against livestock, note, 46 A. L. R. 1536.

For text treatment of this subject see vol. 12 Cal. Jur. 493.

6541. Liable for injury from negligence.

Cited as section 4309, Revised Codes, in *Bowers v. Chicago etc. Ry. Co.*, 61 Mont. 200, 207, 201 Pac. 825.

6542. Designation of stations where records are kept.

Where a railroad line passes through a town at which the county seat is located and the company there keeps the book required by this section, in which to record the description of animals killed or injured and the time and place of the injury, it is under no obligation to cause a notice to be filed with the county clerk designating the station at which it is kept, and its omission to do so does not render it liable in damages under section 6543. *Hunt v. White Sulphur Springs etc. Ry. Co.*, 63 Mont. 508, 208 Pac. 917.

Where a railway company fails to keep the book prescribed by this section in which to record the dates when and the places where on its track livestock is killed in the operations of its trains, and other like matters for information to the person interested, the district court may, in an action to recover damages, decline to hear its defense and award judgment for plaintiff, the statute not being open to constitutional attack. *Foster v. Oregon Short Line R. R. Co.*, 62 Mont. 230, 204 Pac. 375.

6544. Affidavit of ownership and value—Attorney's fee.

In an action against a railroad for the killing of livestock on its track, in which, under this section, an attorney's fee, to be fixed by the court, may be allowed to the successful party, testimony as to the value of the attorney's services is not admissible, the question of its allowance being one for the determination of the court and not of the jury in ar-

riving at the amount of their verdict. *Vaill v. Northern Pacific Ry. Co.*, 66 Mont. 301, 213 Pac. 446.

Validity of statutory provision for recovery of attorneys' fees as a penalty for failure to fence tracks, note, 11 A. L. R. 886.

CHAPTER 36.

GENERAL REGULATIONS OF BUSINESS OF RAILROADS.

6586. Passenger rate of three cents per mile.

In an action to enjoin the intrastate carriers of passengers in Montana from exacting a per mile fare of three and six-tenths cents under authority of an order of the Interstate Commerce Commission issued on January 24, 1921, and to enforce the provision of this section, fixing three cents per mile as the maximum intrastate fare, held, under the decisions of the supreme court of the United States

in the New York and Wisconsin rate cases (see opinion) decided February 27, 1922, that the Interstate Commerce Commission has power to fix rates for intrastate travel under the provision of the Transportation Act of 1920 (41 Stat. 456), authorizing it to remove "any undue, unreasonable or unjust discrimination against interstate or foreign commerce," and that the provision of this

section is therefore not capable of enforcement. *State ex rel. Rankin v. Northern Pacific Ry. Co.*, 62 Mont. 576, 205 Pac. 959.

6595. Obstruction of highway crossings by railroads.

Cited in *Knott v. Pepper*, 74 Mont. 236, 244, 239 Pac. 1037.

6597. Fire-guards.

Where plaintiff in an action against a railway company for damages from fire set by sparks from a locomotive bases his action on the failure of the company to comply with the provision of this section to plow a fire-guard on each side of its track where it passes through range or grazing country, he must allege

in his complaint that the property burned was situated in a "range or grazing country"; failure to so allege renders testimony relating to a breach of its provisions inadmissible and instructions relating thereto improper. *Missoula Trust & Savings Bank v. Northern Pacific Ry. Co.*, 76 Mont. 201, 245 Pac. 949.

6599. Duty to construct drain and ditches.

Applied with section 6507 as defining duty of railroad companies to construct culverts and openings for the disposal

of surface waters. *Le Munyon v. Gallatin Valley Ry. Co.*, 60 Mont. 517, 199 Pac. 915.

6600. Coal-burning locomotives, skidders, etc., to be provided with spark-arresters.

Violation of the provisions of this section, making it the duty of railway companies to equip their coal burning locomotives with approved spark-arresters, is negligence per se. *Missoula Trust &*

Savings Bank v. Northern Pacific Ry. Co., 76 Mont. 201, 245 Pac. 949.

For text treatment of this subject see vol. 12 Cal. Jur. 529.

6601. Failure to comply with law a misdemeanor—Penalty.

Cited in *Missoula Trust & Savings Bank v. Northern Pacific Ry. Co.*, 76 Mont. 201, 213, 245 Pac. 949.

6605. Liability for death or personal injury.

In a personal injury action by an employee against his employer, whether based upon the Employers' Liability Act or not, plaintiff has the burden of proving negligence. *Hassan v. Northern Pacific Ry. Co.*, 60 Mont. 105, 198 Pac. 446.

Sections 6605-6608 were cited as chapter 29, L. 1911 in *Kambris v. Chicago etc. Ry. Co.*, 62 Mont. 88, 91, 203 Pac. 859; *Gillespie v. Great Northern Ry. Co.*, 63 Mont. 598, 607, 208 Pac. 1059.

6606. Contributory negligence—Diminution of damages.

Contributory negligence of plaintiff employee in an action brought under either the federal or state Employers' Liability Act, does not bar recovery, but is a fact which may be taken into consideration by the jury in apportioning

the damages. *Kambris v. Chicago etc. Ry. Co.*, 62 Mont. 88, 203 Pac. 859.

For definition of contributory negligence adopted by the supreme court of Montana see *Jepsen v. Gallatin Valley Ry. Co.*, 59 Mont. 125, 135, 195 Pac. 550.

6607. Assumption of risk.

The defense of assumption of risk may be interposed as a bar in an action for personal injuries, brought by a railroad employee when such injuries are caused by hazards incident to the particular business, by failure of the employer to exercise the degree of care required of him by law to provide a

reasonably safe place of work and appliances, provided the employee is aware of the condition of increased hazard thus brought about or the same is so obvious that an ordinarily prudent person would have observed and appreciated it. *Matson v. Hines*, 63 Mont. 214, 207 Pac. 474.

CHAPTER 37.

RAILROAD CROSSINGS—REGULATION.

6625. Railroad crossings outside of incorporated cities and towns.

Sections 6625 to 6636 were cited in *Knott v. Pepper*, 74 Mont. 236, 244, 239 Pac. 1037.

6636. "Railroad company" defined.

Cited in *Knott v. Pepper*, 74 Mont. 236, 244, 239 Pac. 1037.

CHAPTER 41.

FOREIGN CORPORATIONS.

6651. Foreign corporations must file copy of charter and statement.

Isolated transactions, whereby a foreign corporation sells goods manufactured in another state and shipped into Montana by such corporation for use or installation, does not constitute the doing of business in this state within the meaning of this section and section 6653, prescribing the conditions under which foreign corporations may do business in the state. *General Fire Extinguisher Co. v. Northwestern Auto Supply Co.*, 65 Mont. 371, 211 Pac. 308.

Admission of nonpar stock corporation, notes, 19 A. L. R. 132; 36 A. L. R. 795; 45 A. L. R. 1506.

Applicability of statute to corporations not organized for profit, note, 37 A. L. R. 1283.

Domestication of foreign corporations, note, 18 A. L. R. 130.

Agreement as to installing article sold as bringing transaction within state control, note, 11 A. L. R. 614.

Leasing chattels, note, 35 A. L. R. 917.

Soliciting subscriptions to or selling corporate stock, note, 35 A. L. R. 625.

Mode of proving right to do business, note, 2 A. L. R. 1235.

For text treatment of this subject see vol. 7 Cal. Jur. 192.

6653. Contracts void if made before compliance with act.

Applied with section 6651 in *General Auto Supply Co.*, 65 Mont. 371, 211 Pac. 308.

6658. Foreign corporations may exercise power of eminent domain.

Cited in *State ex rel. Continental S. Co. v. Tullock*, 68 Mont. 268, 278, 217 Pac. 348.

PART IV.

Property.

CHAPTER 1.

DEFINITIONS AND NATURE OF PROPERTY.

6663. Property, what constitutes.

Cited in *Town of Cascade v. County of Cascade*, 75 Mont. 304, 310, 243 Pac. 806; *Gas Products Co. v. Rankin*, 63 Mont. 372, 388, 24 A. L. R. 294, 207 Pac. 993.

6665. Wild animals.

Under this section an owner of land has a qualified ownership in wild fowl which were protected, fed and claimed by him thereon, and he alone has the right to hunt them while on his land; hence a trespasser has no right to kill

or take them away. *Herrin v. Sutherland*, 74 Mont. 587, 42 A. L. R. 937, 241 Pac. 328.

Hunter's rights, title and remedies in respect of game which he is pursuing or

has killed or wounded, note, 49 A. L. R. 1498.

Title to game taken by trespasser, note, 23 A. L. R. 1402.

For text treatment of this subject see vol. 12 Cal. Jur. 1081.

6667. Real property.

Growing grass is a part of the soil of which it is the natural growth, within the meaning of this section and section 6669, and destruction thereof by the herding of livestock thereon constitutes a damage to the owner's real property. *Kiehl v. Holliday*, 77 Mont. 451, 251 Pac. 527; *Shipler v. Potomac Copper Co.*, 69 Mont. 86, 95, 220 Pac. 1097; *Rodda v. Best et al.*, 68 Mont. 205, 215, 217 Pac. 669.

This and sections 6669, 6670 were cited as sections 4425, 4427, 4428, Revised Codes, in *Smelting etc. Co. v. Railway Co.*, 62 Mont. 281, 292, 21 A. L. R. 1080, 205 Pac. 224; section 4425, Revised Codes, in *Mannix v. Powell County*, 60 Mont. 510, 513, 199 Pac. 914.

For text treatment of this subject see vol. 22 Cal. Jur. 413.

6668. Land.

Cited in *State ex rel. Northern Pacific Ry. Co. v. Duncan*, 68 Mont. 420, 425, 219 Pac. 638.

6669. Fixtures.

A building erected upon land belongs to the owner of the land, and the burden of proof is upon him who claims that it is personal property to show that it is, the presumption to the same effect declared by this section, being a disputable one which may be overcome by evidence that the building was constructed in such a manner or under such circumstances as to preclude the idea that it was intended

to become a part of the realty. *Shipler v. Potomac Copper Co.*, 69 Mont. 86, 220 Pac. 1097.

Applied with section 6667 in *Kiehl v. Holliday*, 77 Mont. 451, 251 Pac. 527.

Cited in *Schmuck v. Beck*, 72 Mont. 606, 615, 234 Pac. 477.

For text treatment of this subject see vol. 12 Cal. Jur. 560.

6670. Fixtures attached to mines.

This and section 6671 were cited as sections 4428, 4429, Revised Codes, in *Pioneer Mining Co. v. Bannack Gold*

Mining Co., 60 Mont. 254, 265, 198 Pac. 748.

6671. Appurtenances.

Cited in *Rodda v. Best et al.*, 68 Mont. 205, 215, 217 Pac. 669.

CHAPTER 2.

OWNERSHIP OF PROPERTY AND INTERESTS THEREIN.

6674. Property of the state.

Cited in *Herrin v. Sutherland*, 74 Mont. 587, 595, 42 A. L. R. 937, 241 Pac. 328.

6682. Interest in common defined.

Cited in *Rodda v. Best et al.*, 68 Mont. 205, 218, 217 Pac. 669.

6685. Present interest—To what entitles owner.

Cited in *In re Estate of Schuh*, 66 Mont. 50, 58, 212 Pac. 516.

6686. Future interest—To what entitles owner.

Cited in *In re Estate of Schuh*, 66 Mont. 50, 58, 212 Pac. 516.

CHAPTER 3.

CONDITIONS AND LIMITATIONS OF OWNERSHIP.

6707. Leases of agricultural land for over ten years—Exceptions.

Cited in *Corey v. Sunburst Oil & Gas Co.*, 72 Mont. 383, 394, 233 Pac. 909.

CHAPTER 4.

REAL PROPERTY AND ESTATES THEREIN.

6722. Real property—How governed.

Cited in *Gas Products Co. v. Rankin*, 63 Mont. 372, 388, 24 A. L. R. 294, 207 Pac. 993.

CHAPTER 5.

SERVITUDES.

6749. Servitudes attached to land.

Cited as section 4507, Revised Codes, in *Mannix v. Powell County*, 60 Mont. 510, 512, 199 Pac. 914.

6750. Servitudes not attached to land.

Cited in *Rodda v. Best et al.*, 68 Mont. 205, 215, 217 Pac. 669.

6757. Actions by owner and occupant of dominant tenement.

Cited as section 4515, Revised Codes, in *Mannix v. Powell County*, 60 Mont. 510, 513, 199 Pac. 914.

6759. How extinguished.

Where an irrigation ditch was originally constructed over the public domain by the predecessors of the owner, the latter by virtue of section 2339, United States Compiled Statutes, acquired his right to maintain it by grant from the United States and not by employment, and hence his right was not subject to ex-

tinguishment by disuse for a period of ten years, as provided by this section, subdivision 4, in case of a servitude acquired by enjoyment. *Rodda v. Best et al.*, 68 Mont. 205, 217 Pac. 669.

For text treatment of this subject see vol. 9 Cal. Jur. 959.

CHAPTER 6.

RIGHTS INCIDENTAL TO THE OWNERSHIP OF REAL PROPERTY.

6764. Assignee of lessee—Remedies of lessor against.

Where one holds as assignee of an oil and gas sublease his rights and liabilities in an action seeking its termination must be determined from it, and not from the original lease to the sublessor, there being neither privity of estate nor privity of contract between him and the lessor; and the provisions of this section, providing that whatever remedies the lessor has against the lessee may be enforced

against an assignee of the lease have no application as between the original lessor and the assignee of the sublease, but do apply as between the assignee and the sublessor. *McNamer Realty Co. v. Sunburst etc. Co.*, 76 Mont. 332, 247 Pac. 166.

For text treatment of this subject see vol. 15 Cal. Jur. 751.

6770. Rights of owner.

Cited in *Rodda v. Best et al.*, 68 Mont. 205, 217, 217 Pac. 669; *Gas Products Co. v. Rankin*, 63 Mont. 372, 389, 24 A. L. R. 294, 207 Pac. 993.

6771. Boundaries by water.

Cited in *Herrin v. Sutherland*, 74 Mont. 587, 595, 42 A. L. R. 937, 241 Pac. 328.

CHAPTER 7.

OBLIGATIONS INCIDENTAL TO THE OWNERSHIP OF REAL PROPERTY—
MONUMENTS AND FENCES.**6776. Duties of tenant for life.**

Cited as section 4534, Revised Codes, in *Anderson v. McClenethan*, 62 Mont. 387, 391, 205 Pac. 230.

6777. Monuments and fences.

Under this section coterminous land owners are mutually bound equally to maintain a division fence; each must contribute his share of the land, material and labor for its erection and maintenance. *Schmuck v. Beck*, 72 Mont. 606, 234 Pac. 477.

This and sections 6778, 6779 were cited in *Dorman v. Erie*, 63 Mont. 579, 583, 208 Pac. 908.

Cited as section 4535, Revised Codes,

in *Briggeman v. Corrigan*, 60 Mont. 205, 208, 198 Pac. 443.

Constitutionality of statutes relating to fences, notes, 6 A. L. R. 213; 18 A. L. R. 67.

Injunction to restrain interference with fences, note, 32 A. L. R. 522.

Rights as to removal or rebuilding, note, 8 A. L. R. 1644.

For text treatment of this subject see vol. 12 Cal. Jur. 489.

6778. Partition fences.

This and the following section were cited as sections 2085, 2086, Revised

Codes, in *Briggeman v. Corrigan*, 60 Mont. 205, 208, 198 Pac. 443.

6780. Fence when joint occupancy ceases.

This section provides that where one of several occupants of lands belonging to them in severalty desires a partition fence, the others must, within six months after written notice to that effect, construct their portion of such fence, failing in which the person giving notice may build it and recover the proportion of the expense due from them. Plaintiff in an action to recover by contribution de-

fendant's share of a partition fence, two days before the expiration of the six-month period began its construction. Held, that defendant was entitled to the full period of six months before default could be predicated upon his failure to act, and that by acting before its expiration plaintiff forfeited his cause of action for contribution. *Briggeman v. Corrigan*, 60 Mont. 205, 198 Pac. 443.

CHAPTER 8.

USES AND TRUSTS IN RELATION TO REAL PROPERTY.

6784. Trusts must be in writing.

The basis of a constructive trust is fraud, and such a trust arises when the legal title to property is obtained by a person in violation of some duty owed to the one who is equitably entitled thereto, the property being held in hostility to his beneficial rights of ownership. *Word v. Moore*, 66 Mont. 550, 214 Pac. 79.

Cited in *Word v. Moore*, 66 Mont. 550, 555, 214 Pac. 79.

Sections 6784, 6785 were cited in *Wilson v. Wilson et al.*, 64 Mont. 533, 543, 210 Pac. 896; *MacGinniss Realty Co. v. Hinderager*, 63 Mont. 172, 184, 206 Pac. 436.

For text treatment of this subject see vol. 25 Cal. Jur. 154.

6785. Transfer to one for money paid by another.

To raise a resulting trust in land, the consideration for its purchase must have been paid at the time or before the legal title to it passed to the party

sought to be charged in the trust capacity, payments made thereafter being insufficient for that purpose. *MacGinniss Realty Co. v. Hinderager*, 63 Mont. 172, 206 Pac. 436.

The rule declared by this section, that where real property is conveyed to one person and the consideration therefor is paid by another, a trust is presumed to result in favor of the person paying the consideration, held, subject to the exception that where the property is purchased by one with his own money and the title is placed by him in another to whom he stands in a confidential relation, such as husband, wife, parent, child, etc., the presumption, rebuttable in character, is that the conveyance is made as a gift. *Clary v. Fleming*, 60 Mont. 246, 198 Pac. 546.

Cited in *Feeley v. Feeley*, 72 Mont. 84, 92, 231 Pac. 908; *In re Estate of Deschamps*, 65 Mont. 207, 212, 212 Pac. 512; *Wilson v. Wilson et al.*, 64 Mont. 533, 543, 210 Pac. 896; *MacGinniss Realty Co. v. Hinderager*, 63 Mont. 172, 184, 206 Pac. 436.

Advancing money to purchase real estate under oral agreement by vendee to give a mortgage thereon as security, which is not carried out, as basis of resulting trust, note, 18 A. L. R. 1099.

Presumption as to advancement or trust where property is purchased with money of parent and title is taken in name of child, note, 26 A. L. R. 1126.

For text treatment of this subject see vol. 25 Cal. Jur. 195.

6789. Vested power, execution of.

The fact that the third member of a board of three trustees of a common-law trust gave his approval to a contract entered into by the trust at a meeting of its board of trustees at which only two trustees were present did not render the contract valid, for the reason that under this section the board could act as such only when assembled as a board

and not through the members composing it. *Williard et al. v. Campbell Oil Co. et al.*, 77 Mont. 30, 248 Pac. 219.

Cited in *Petroleum Co. v. Gordon-Campbell-Kevin Syndicate*, 75 Mont. 261, 270, 242 Pac. 540.

For text treatment of this subject see vol. 25 Cal. Jur. 333.

CHAPTER 10.

PERSONAL PROPERTY—LAW GOVERNING—KINDS OF PERSONAL PROPERTY.

6804. Things in action defined.

Cited in *State ex rel. Coffey v. District Court*, 74 Mont. 355, 358, 240 Pac. 667.

CHAPTER 11.

ACQUISITION OF PROPERTY BY OCCUPANCY.

6816. Property—How acquired.

Cited in *Hoppin v. Long*, 74 Mont. 558, 582, 241 Pac. 636.

6818. Prescription.

Adverse user of a ditch right across another's land for the statutory period limited for the acquisition of title to real property (ten years) is sufficient to confer a prescriptive title to an easement in an irrigating ditch. *Hays v. DeAtley et al.*, 65 Mont. 558, 212 Pac. 296.

Cited in *Stetson v. Youngquist et al.*, 76 Mont. 600, 606, 248 Pac. 196.

Sufficiency of proof of title by adverse possession, note, 7 A. L. R. 1174.

Acquisition of title to mine or minerals by adverse possession, note, 13 A. L. R. 372.

Adverse possession based on projection

or inclination of wall or other structure, note, 49 A. L. R. 1015.

Rule that title subsequently acquired by grantor inures to the benefit of the grantee as affecting color of title, note, 6 A. L. R. 1430.

Adverse possession as against vendor by one who enters under executory contract, note, 1 A. L. R. 1329.

Dower as affected by adverse possession, note, 41 A. L. R. 1115.

Adverse possession by third party or stranger of property held in trust, note, 2 A. L. R. 41.

Adverse possession as against beneficiary who neglects to compel trustee to

take steps to recover trust property, note, 2 A. L. R. 36.

Adverse possession as affecting rights of cotenants *inter se* as to timber, notes, 2 A. L. R. 1000; 41 A. L. R. 584.

Possession by one claiming under or through mortgage by cotenant as adverse to other cotenant, note, 27 A. L. R. 18.

Right of cotenant paying taxes to contribution from his cotenants as affected by adverse possession of the property, note, 48 A. L. R. 593.

Adverse possession as against *cestui que* trust also remainderman, note, 2 A. L. R. 55.

Necessity of actual possession to give title by adverse possession under invalid tax title, note, 22 A. L. R. 550.

Claimant's notice of adverse claim by grantee of other cotenant, note, 27 A. L. R. 23.

Public use of property as affecting acquisition of title by adverse possession, note, 2 A. L. R. 1368.

Permissive use of easement as adverse possession, note, 1 A. L. R. 890.

Public's permissive use as affecting acquisition of title by adverse possession as against third person, note, 2 A. L. R. 1370.

Possession of vendee who enters under executory contract as adverse to vendor, note, 1 A. L. R. 1329.

Necessity of notice to vendor of repudiation by vendee under executory con-

tract to render the latter's possession adverse, note, 1 A. L. R. 1348.

Intent to claim adversely as essential to acquirement of title by projection or inclination of wall or other structure, note, 49 A. L. R. 1015.

Writing as essential to color of title, note, 2 A. L. R. 1457.

Cotenant's executory contract to convey as color of title as against other cotenants, note, 27 A. L. R. 33.

Cotenant's deed as sufficient color of title as against other cotenants, note, 27 A. L. R. 22.

Cotenants quitclaim deed as sufficient color of title as against other cotenants, note, 27 A. L. R. 22.

Grantee's right to tack adverse possession by predecessor of parcel beyond that called for by deed under which he claims, note, 46 A. L. R. 792.

Trespass as interrupting adverse possession, note, 22 A. L. R. 1458.

Effect of death of or failure to appoint trustee to interrupt adverse possession of trust property, note, 2 A. L. R. 49.

Adverse possession of common, note, 9 A. L. R. 1373.

Adverse possession of railroad right of way, note, 50 A. L. R. 303.

Encroachment of fence on highway as affecting title or rights of public, note, 6 A. L. R. 1210.

For text treatment of this subject see vol. 1 Cal. Jur. 488.

CHAPTER 12.

ACQUISITION OF REAL PROPERTY BY ACCESSION—FIXTURES—BANKS OF STREAMS—ISLANDS.

6819. Fixtures.

Where one places a fence on the land of another without an agreement permitting him to do so, it belongs to the owner of the land unless he chooses to require him to remove it, the presumption, disputable in nature, being that one in possession of land is also the owner of the fixtures thereon. *Schmuck v. Beck*, 72 Mont. 606, 234 Pac. 477.

Whether rails furnished by a railroad company to a mining company and laid by the latter upon its property to serve its own purposes were trade fixtures within the meaning of this section depends upon the relation existing between the parties at the time they were laid and their intention with respect to them. *Helena & Livingston Smelting & Refining Co. v. Northern Pacific Ry. Co.*, 62 Mont. 281, 21 A. L. R. 1080, 205 Pac. 224.

Casings of oil or gas well as fixtures, note, 39 A. L. R. 1255.

Flagpole or other ornament in garden, yard or park as fixture, note, 50 A. L. R. 640.

Garage as fixture, note, 36 A. L. R. 1519.

Gasoline station, storage tank or other apparatus as fixture, note, 36 A. L. R. 447.

Gas range as fixture, note, 7 A. L. R. 1578.

Pavement, flooring, platform, walks and the like as fixtures, note, 13 A. L. R. 1454.

Spur or side track as fixture, note, 21 A. L. R. 1089.

Storage tank or other apparatus of gasoline station as fixture, note, 17 A. L. R. 1221.

Water heater as fixture, note, 48 A. L. R. 1146.

For text treatment of this subject see vol. 12 Cal. Jur. 560.

6820. Alluvion.

Under this section and section 6823, "accreted lands"—that is, additions to the area of real estate from the gradual deposit by water of solid material, whether mud, sand or sediment, producing dry land which before was covered by water, along the banks of a navigable or unnavigable stream—belong to the riparian owner. *Bode v. Rollwitz et al.*, 60 Mont. 481, 199 Pac. 688.

De minimis non curat lex as applied to accretions, note, 44 A. L. R. 190.

Following accretions across division line previously submerged by action of water, notes, 8 A. L. R. 640; 41 A. L. R. 395.

For text treatment of this subject see vol. 1 Cal. Jur. 122; 25 Cal. Jur. 1052.

6823. In unnavigable streams.

Applied with section 6820 in announcing the rule that accreted lands belong

to the riparian owner. *Bode v. Rollwitz et al.*, 60 Mont. 481, 199 Pac. 688.

6825. Fixtures—Removal of by tenant.

Cited as section 4578, Revised Codes, in *Smelting etc. Co. v. Railway Co.*, 62

Mont. 281, 292, 21 A. L. R. 1080, 205 Pac. 224.

CHAPTER 14.

ACQUISITION OF PROPERTY BY TRANSFER—GRANTS AND THEIR INTERPRETATION.

6835. Transfer defined.

Sections 6835, 6836 were cited in *Franzke v. Fergus County et al.*, 76 Mont.

150, 153, 245 Pac. 962; *Genzberger v. Adams*, 62 Mont. 430, 435, 205 Pac. 658.

6837. What may be transferred.

Cited in *Genzberger v. Adams*, 62 Mont. 430, 435, 205 Pac. 658.

6841. When oral.

Cited in *Genzberger v. Adams*, 62 Mont. 430, 435, 205 Pac. 658.

6843. Delivery necessary.

Cited in *Springhorn v. Springer et al.*, 75 Mont. 294, 300, 243 Pac. 803.

6844. Date.

The presumption declared by this section that a grant duly executed is presumed to have been delivered at its date, arising from the certificate of acknowledgment, is not conclusive, but may be overcome by other facts and circumstances, such as that the grantor remained in possession and control of the

property for many years and up to the time of its recordation, that after recordation it was returned to him, etc. *Springhorn v. Springer et al.*, 75 Mont. 294, 243 Pac. 803.

For text treatment of this subject see vol. 9 Cal. Jur. 193.

6845. Delivery to grantee is necessarily absolute.

Cited in *Adams v. Durfee et al.*, 67 Mont. 315, 320, 215 Pac. 664.

6846. Delivery in escrow.

Cited in *Plymale et al. v. Keene*, 76 Mont. 403, 410, 247 Pac. 554.

6848. Constructive delivery.

Delivery of a deed to real property, either actual or constructive, by which

the grantor is divested of title and loses control over the property beyond the

right of recall, is essential to a vesting of title in the grantee. *Springhorn v. Springer et al.*, 75 Mont. 294, 243 Pac. 803.

For text treatment of this subject see vol. 9 Cal. Jur. 160.

6849. Grants—How interpreted.

Cited in *Adams v. Durfee et al.*, 67 Mont. 315, 320, 215 Pac. 664.

6853. Irreconcilable provisions.

Cited in *McDaniel v. Hager-Stevenson Oil Co.*, 75 Mont. 356, 368, 243 Pac. 582.

6857. Incidents.

Cited in *Thompson v. Twodot Fertilizer Co. et al.*, 71 Mont. 486, 492, 230 Pac. 588.

CHAPTER 15.

TRANSFER OF REAL PROPERTY—METHOD AND EFFECT.

6859. Requisites for transfer of certain estates.

An easement can be created, granted or transferred only by operation of law, by an instrument in writing or by prescription. *Mannix v. Powell County*, 75 Mont. 202, 243 Pac. 568.

Cited as section 4612, Revised Codes

in *Wells v. Waddell*, 59 Mont. 436, 441, 196 Pac. 1000.

For text treatment of this subject see vol. 9 Cal. Jur. 97.

6867. Subsequently acquired title passes by operation of law.

Cited in *Beck v. Felenzer et al.*, 69 Mont. 592, 598, 223 Pac. 499.

6875. What the term "encumbrances" embraces.

Cited as section 4628, Revised Codes, in *Anderson v. McClenethan*, 62 Mont. 387, 390, 205 Pac. 230.

CHAPTER 16.

TRANSFER OF PERSONAL PROPERTY—MODES OF TRANSFER GIFTS.

6879. Transfer of title under sale.

In a prosecution for grand larceny the information charged defendant, while acting as cashier of a bank, with having stolen a Liberty bond, the property of one L. and purchased by him on the installment plan. The bond was one of a number subscribed for by the bank to a reserve bank and held in trust for the individual subscribers until full payment therefor was made by them. Held, that title to the bond in question was in the bank, and did not pass to L., under this section, until it was identified on delivery to L. upon final payment, and that, therefore, at the time of the alleged

offense, several months prior to delivery, he was not the owner thereof. *State v. Wallin*, 60 Mont. 332, 199 Pac. 285.

Acceptance of a receipt for corporate stock and receipt of a promissory note therefor constituted a transfer, the title to and ownership of the stock thereupon vesting in the subscriber, failure of the corporation to deliver a certificate to him, not affecting his title or vitiating the sale. *Gallatin County F. Alliance v. Flannery*, 59 Mont. 534, 197 Pac. 996.

For text treatment of this subject see vol. 22 Cal. Jur. 942.

CHAPTER 17.

RECORDING TRANSFERS—RELEASE OF OIL, GAS AND MINERAL LEASES.

6899. Instrument—When deemed recorded.

Cited in *Guerin v. Sunburst Oil & Gas Co.*, 68 Mont. 365, 370, 218 Pac. 949.

6902. Oil, gas and mineral leases, release of record of.

After forfeiture of an oil and gas lease has been declared and demand made for its return for nonperformance of the condition to commence drilling operations within a given time, it is immaterial that the lessee thereafter commenced drilling, and the lessee's failure to release the lease of record within sixty days entitles the lessor to prosecute his action under sections 6902-6904. *Solberg v. Sunburst Oil & Gas Co.*, 76 Mont. 254, 246 Pac. 168.

The lessor of oil and gas rights is not required to give written notice of his intention to declare a forfeiture of the lease for failure of the lessee to commence drilling operations within the time stipulated, to entitle him to prevail in an action brought under sections 6902-6904, for damages for failure to clear the record of the forfeited lease. *Solberg v. Sunburst Oil & Gas Co.*, 76 Mont. 254, 246 Pac. 168.

In an action for damages brought under sections 6902-6904, which is tortious in its nature, the measure of damages recoverable is the fair market value of an oil and gas lease at a time when the record should have been clear, i. e., plaintiff may recover its highest market value at any time up to the time of trial. *Solberg v. Sunburst Oil & Gas Co.*, 76 Mont. 254, 246 Pac. 168.

That plaintiff's land was sold on foreclosure sale after his action for damages brought under sections 6902-6904 was commenced, and the period of redemption had expired prior to retrial of the cause, did not result in the abatement of the action. (Sec. 9086, Rev. Codes 1921.) *Solberg v. Sunburst Oil & Gas Co.*, 76 Mont. 254, 246 Pac. 168.

In an action brought under sections 6902-6904 to obtain the cancellation of an oil and gas lease and to recover the penalty provided therein for the lessee's failure to release within the time speci-

fied and resultant damages, a writ of attachment may issue as authorized by section 6903. *Daley et al. v. Torrey et al.*, 71 Mont. 513, 230 Pac. 782.

The fact that sections 6902-6904 do not provide for a form of affidavit for a writ of attachment is of no moment, since under section 8882, where jurisdiction is conferred on a court, all the means necessary to give it effect are also given, and in the absence of such a provision the court may adopt any suitable process or mode of proceeding in the premises. *Daley et al. v. Torrey et al.*, 71 Mont. 513, 230 Pac. 782.

An action to compel the release of an oil and gas lease of record on the ground that the lessee had failed to commence drilling operations within the time fixed in the lease, by reason of which it became forfeited, and for the recovery of the statutory penalty, damages and attorney's fees is one at law, entitling plaintiff to a jury trial. *Solberg v. Sunburst Oil & Gas Co. et al.*, 70 Mont. 177, 225 Pac. 612.

In an action to enforce the cancellation of an oil and gas lease and to recover damages for refusing to cancel (sections 6902-6904), a written paragraph therein, providing that in the event a well was not commenced within the time limit mentioned in the lease, the instrument should be null and void, was controlling as against a printed one under which, if the operations were not commenced within that time the lessor should pay two dollars per acre for each additional year commencement of drilling was delayed, and that demurrer to the complaint was improperly sustained. *Daley et al. v. Torrey*, 69 Mont. 599, 223 Pac. 498.

Cited in *Solberg v. Sunburst Oil & Gas Co.*, 73 Mont. 94, 101, 235 Pac. 761; *Corey v. Sunburst Oil & Gas Co.*, 72 Mont. 383, 394, 233 Pac. 909.

6903. Action to compel release—Damages—Costs and attorney's fees.

Under his general allegation of damages plaintiff in an action to compel the release of record of an oil and gas lease after an alleged forfeiture under its terms, proof that because of defendant's failure to make release plaintiff had been prevented to make a new lease to his damage (special in character) in a given amount was inadmissible for that purpose, but admissible to show the nominal damages recoverable under this section. *Solberg v. Sunburst Oil & Gas Co.*, 73 Mont. 94, 235 Pac. 761.

The provision of this section allowing plaintiff in an action to compel the release of record of an oil and gas lease an attorney's fee for preparing and prose-

cuting the suit, is unconstitutional as denying the defendant the equal protection of the law, in that the provision is not reciprocal. *Solberg v. Sunburst Oil & Gas Co.*, 73 Mont. 94, 235 Pac. 761.

The concluding sentence of this section that "in all such actions writs of attachment may issue," construed to mean actions to cancel oil and gas leases, and the phrase "as in other cases" held to refer to the time at which the writ may issue and the effect which it has when issued, and not to limit the right to it to cases which fall within the purview of the general attachment statute. *Daley et al. v. Torrey et al.*, 71 Mont. 513, 230 Pac. 782. Sections 6903, 6904 were applied

with section 6902 in *Solberg v. Sunburst Oil & Gas Co.*, 76 Mont. 254, 246 Pac. 168.

Cited in *McNamer Realty Co. v. Sunburst etc. Co.*, 76 Mont. 332, 344, 247 Pac. 166; *Corey v. Sunburst Oil & Gas*

Co., 72 Mont. 383, 394, 233 Pac. 909. Applied with section 6902 in *Solberg v. Sunburst Oil & Gas Co. et al.*, 70 Mont. 177, 225 Pac. 612; *Daley et al. v. Torrey*, 69 Mont. 599, 601, 223 Pac. 498.

6904. Demand for release—When and upon whom to be made.

Cited in *Solberg v. Sunburst Oil & Gas Co. et al.*, 70 Mont. 177, 181, 225 Pac. 612.

CHAPTER 18.

ACKNOWLEDGMENT AND PROOF OF INSTRUMENTS.

6905. By whom acknowledgments may be taken in this state.

Cited in *Angell v. Lewistown State Bank et al.*, 72 Mont. 345, 351, 232 Pac. 90.

6910. Officer taking acknowledgment must know person—Corporations.

Cited as section 4659, Revised Codes, in *Genzberger v. Adams*, 62 Mont. 430, 435, 205 Pac. 658.

6914. General form of certificate.

Cited in *Springhorn v. Springer et al.*, 75 Mont. 294, 301, 243 Pac. 803.

6915. Form of acknowledgment by corporation.

Cited as section 4664, Revised Codes, in *Genzberger v. Adams*, 62 Mont. 430, 435, 205 Pac. 658.

6926. Officers authorized to do certain things.

Cited in *Angell v. Lewistown State Bank et al.*, 72 Mont. 345, 351, 232 Pac. 90.

CHAPTER 19.

EFFECT OF RECORDING OR FAILURE TO RECORD INSTRUMENTS.

6934. Record—To whom notice—Recording copies.

The certificate of sale issued to a purchaser under a foreclosure sale by the sheriff is a "conveyance" with the Recording Act. *Citizens' National Bank v. Western L. & B. Co.*, 64 Mont. 40, 208 Pac. 893.

Cited in *Morrison v. Farmers' etc.*

State Bank, 70 Mont. 146, 149, 152, 225 Pac. 123; *Guerin v. Sunburst Oil & Gas Co.*, 68 Mont. 365, 370, 218 Pac. 949.

For text treatment of this subject see vol. 22 Cal. Jur. 616.

6935. Conveyances to be recorded, or are void, etc.

This and section 6936 were cited in *Stolze Land Co. v. Westberg*, 63 Mont. 38, 45, 206 Pac. 407.

6938. Unrecorded instruments valid between the parties.

Where, after giving an oil and gas lease upon his land to one party, which lease was not recorded, the owner gave an option to another party to purchase the land subject to the lease, the option being recorded, plaintiff, who purchased the land before the expiration of the

option, was chargeable with constructive notice of the option and its contents, and in the absence of inquiry from the lessee, was not an innocent purchaser without notice and was therefore not entitled to an injunction to prevent the lessee from going on the land for pur-

poses of exploration. *Guerin v. Sunburst Oil & Gas Co.*, 68 Mont. 365, 218 Pac. 949.

contract for sale of real estate, note, 26 A. L. R. 1552.

For text treatment of this subject see vol. 22 Cal. Jur. 623.

Effect of failure to record executory

CHAPTER 21.

HOMESTEADS.

6945. Homestead—Of what it consists.

The homestead authorized to be selected by the probate court under section 10145 is the homestead provided for by sections 6945-6948; therefore the value and extent of it must not be greater than as prescribed by those sections. In *re Tripps' Estate*, 71 Mont. 154, 227 Pac.

1005. Sections 6945-6972 were cited in *McCarthy v. Kelley et al.*, 63 Mont. 233, 236, 206 Pac. 782.

For text treatment of this subject see vol. 13 Cal. Jur. 412.

6948. Exempt from forced sale.

The exemption statute which, by failing to include a homestead subject to attachment within the exceptions to the general rule that a homestead is exempt from execution, in effect declares that the lien of an attachment does not operate to defeat a homestead declaration, enters into and constitutes a part of a contract of sale of goods; therefore the contention of the seller that to hold a

homestead declaration filed after he (the seller) had caused an attachment to be levied on the land sought to be homesteaded by the buyer, would destroy a vested right secured to him by the lien, cannot be sustained. *Wall v. Duggan et al.*, 76 Mont. 239, 245 Pac. 953.

For text treatment of this subject see vol. 13 Cal. Jur. 479.

6949. When subject to execution or forced sale.

The filing of a homestead declaration after a writ of attachment has been levied upon the lands exempts the lands from sale on execution obtained after

the declaration was filed. *Wall v. Duggan et al.*, 76 Mont. 239, 245 Pac. 953.

For text treatment of this subject see vol. 13 Cal. Jur. 482.

6953. Proceedings on execution against homestead.

Sections 6953-6967 were cited in *Wall v. Duggan et al.*, 76 Mont. 239, 244, 245 Pac. 953.

6968. Selection of homestead—Quantity and value of land.

A homestead may be claimed upon an undivided interest in lands. *Wall v. Duggan et al.*, 76 Mont. 239, 245 Pac. 953.

While a failure to set forth in a homestead declaration the value of the premises does not invalidate it, failure to strictly comply with the requirement that the area claimed must not exceed the statutory limit renders the declaration void. Therefore a declaration of home-

stead covering "an undivided one-half interest and equity" in a 240-acre tract was void under this section. *McCarthy v. Kelley et al.*, 63 Mont. 233, 206 Pac. 782.

Cited in *In re Tripps' Estate*, 71 Mont. 154, 160, 227 Pac. 1005.

For text treatment of this subject see vol. 13 Cal. Jur. 442, 462.

6969. "Head of a family" defined. The phrase "head of a family" as used in this chapter, includes within its meaning:

1. The husband, when the claimant is a married person, or the wife, where the husband fails to join in the declaration.

2. Every person who has attained the age of sixty years and who actually resides on the premises.

3. Every person who has residing on the premises with him or her, and under his or her care and maintenance, either:

First. His or her minor child, or the minor child of his or her wife or husband, or former wife or husband;

Second. A minor grandchild, brother or sister, or minor child of a brother or sister;

Third. A father, mother, grandfather, or grandmother;

Fourth. The father, mother, grandfather, or grandmother, of a husband or wife; or former husband or wife.

Fifth. An unmarried sister or any other of the relatives mentioned in this section, who have attained the age of majority and are unable to take care of or support themselves.

Amd. Sec. 1, Ch. 86, L. 1925.

For text treatment of this subject see vol. 13 Cal. Jur. 443.

6971. Declaration of homestead—Must contain what.

In selecting a homestead for the family of a decedent where none was selected prior to his death, the probate court may, in the absence of a mode of procedure prescribed by the statute, proceed in substantially the manner indicated by this section for its selection during the

lifetime of a decedent, thereafter following the procedure outlined by sections 10152-10157. In *re* Tripps' Estate, 71 Mont. 154, 227 Pac. 1005.

For text treatment of this subject see vol. 13 Cal. Jur. 468.

6973. Tenure by which homestead is held.

Cited in *Wall v. Duggan et al.*, 76 Mont. 239, 244, 245 Pac. 953.

CHAPTER 22.

WILLS—EXECUTION AND REVOCATION.

6975. Married women, wills by.

Under the rule that a will properly executed is entitled to probate, a will of a married woman so executed, naming an executor, providing that he should pay her debts, funeral expenses and expenses of last illness from the funds of the estate, and revoking all former wills, was properly probated, the fact that testatrix, by failing to make mention of her surviving husband therein, had deprived

him of two-thirds of her estate, in disregard of the provisions of this section, prohibiting her from doing so, not being a reason for denying it probate. In *re* Mahaffay's Estate, 72 Mont. 579, 234 Pac. 838.

For text treatment of this subject see vol. 26 Cal. Jur. 629.

7012. Lineal descendants take estate upon death of devisee before testator.

This section, providing that, when any estate is devised to any child or other relation of the testator and the devisee dies before the testator, leaving lineal descendants, such descendants take the estate given by the will in the same manner as the devisee would have done had he survived the testator, applies only to devises and not to legacies. In *re* Estate of Hash, 64 Mont. 118, 208 Pac. 605.

The word "devised" used in this section, providing that if any estate is

devised to any relative of the testator, and the devisee dies before the testator, leaving lineal descendants, they take the estate so given in the same manner the devisee would have done had he survived testator, held to mean a gift of real property by will, and not a gift of personal property. In *re* Fratt's Estate, 60 Mont. 526, 199 Pac. 711.

For text treatment of this subject see vol. 26 Cal. Jur. 949.

7013. Devises of land—How construed.

This and section 7014 were cited as re Fratt's Estate, 60 Mont. 526, 537, 199 sections 4759, 4760, Revised Codes, in In Pac. 711.

7015. Restriction to devise for charitable purposes.

Cited in In re Coppock's Estate, 72 Mont. 431, 437, 39 A. L. R. 1152, 234 Pac. 258.

CHAPTER 23.**WILLS—INTERPRETATION.****7016. Testator's intention to be carried out.**

Cited in In re Spriggs' Estate, 70 Mont. 272, 274, 225 Pac. 617; In re McLure's Estate, 63 Mont. 536, 541, 208 Pac. 900.

7017. Intention to be ascertained from will.

Cited in In re Spriggs' Estate, 70 Mont. 272, 274, 225 Pac. 617; In re Estate of Hash, 64 Mont. 118, 122, 208 Pac. 605.

7020. Harmonizing various parts.

Cited in In re McLure's Estate, 63 Mont. 536, 541, 208 Pac. 900.

7023. Words taken in ordinary sense.

Where a will bequeathed one-half of the testator's estate to his two sisters and the other half to their children if living at the time of his death, and both sisters had died before the will was made leaving no children, the word "children" used in the will could not, under the rules of construction of wills laid down by this section and section 7039 be construed as including grandchildren so as

to permit a grandson of one of the sisters to share in the estate. In re Estate of Hash, 64 Mont. 118, 208 Pac. 605.

Cited in In re Spriggs' Estate, 70 Mont. 272, 274, 225 Pac. 617; In re McLure's Estate, 63 Mont. 536, 541, 208 Pac. 900.

For text treatment of this subject see vol. 26 Cal. Jur. 887.

7024. Words to receive an operative construction.

Cited in In re Spriggs' Estate, 70 Mont. 272, 274, 225 Pac. 617.

7025. Intestacy to be avoided.

In the construction of a will that construction is to be adopted, if possible, which will prevent a partial intestacy. In re Spriggs' Estate, 70 Mont. 272, 225 Pac. 617.

For text treatment of this subject see vol. 26 Cal. Jur. 899.

7030. Devise or bequest of all real or personal property, or both.

This and sections 7031, 7040, 7043, 7049, 7054 and 7057 were cited as sections 4777, 4778, 4787, 4790, 4796, 4801

and 4804, Revised Codes, in In re Fratt's Estate, 60 Mont. 526, 537, 199 Pac. 711.

7039. Mistakes and omissions.

Applied with section 7023 in In re Estate of Hash, 64 Mont. 118, 122, 208 Pac. 605.

7040. When devises and bequests vest.

Cited in In re Connolly's Estate, 73 Mont. 35, 65, 235 Pac. 408; In re Estate of Deschamps, 65 Mont. 207, 212, 212 Pac. 512; as section 4787, Revised Codes,

in Rumney et al. v. Skinner, 64 Mont. 75, 82, 208 Pac. 895; In re Smith's Estate, 60 Mont. 276, 298, 199 Pac. 696.

7042. Death of devisee or legatee.

Under this section legacies to one who died before the testatrix, lapsed upon the latter's death, and were distributable to her heirs under the laws governing

intestacy. In *re* Fratt's Estate, 60 Mont. 526, 199 Pac. 711.

For text treatment of this subject see vol. 26 Cal. Jur. 952.

CHAPTER 24.**WILLS—GENERAL PROVISIONS.****7052. Estates chargeable.**

This and the following section were cited as sections 4799, 4800, Revised

Codes, in *re* Smith's Estate, 60 Mont. 276, 298, 199 Pac. 696.

7057. Specific devises and legacies.

Cited in *re* Bradfield's Estate, 69 Mont. 247, 260, 221 Pac. 531.

7069. The law of what place applies.

Under the maxim "mobilia sequuntur personam" the legal situs of personal property actually present in this state was in the place of the owner's domicile at the time of his death—in China—and under this section the interpretation of his will, so far as the disposition of that

property is concerned, is governed by the law of his domicile. In *re* Coppock's Estate, 72 Mont. 431, 39 A. L. R. 1152, 234 Pac. 258.

For text treatment of this subject see vol. 26 Cal. Jur. 881.

CHAPTER 25.**SUCCESSION.****7071. Succession defined.**

Sections 7071-7073 were cited in *Hoppin v. Long*, 74 Mont. 558, 582, 241 Pac. 636.

7072. Interstate estate—To whom passes.

Under this section title to the property of one who dies intestate passes immediately to the heirs, subject to the control of the district court and to the possession of the administrator for the purposes of administration. *Lamont v. Vinger*, 61 Mont. 530, 202 Pac. 769.

Sections 7072, 7073 were cited in *State ex rel. Petters & Co. v. District Court*, 76

Mont. 143, 148, 245 Pac. 529; In *re* Connolly's Estate, 73 Mont. 35, 65, 235 Pac. 408; as section 4819, Revised Codes, in *Lamont v. Vinger*, 61 Mont. 530, 545, 202 Pac. 769.

For text treatment of this subject see vol. 9 Cal. Jur. 452, 470.

7073. Succession to and distribution of property.

Since under this section the father and mother of an intestate were his heirs at law, the allegation of plaintiff administrator that the adult for whose wrongful death damages were sought died intestate, leaving surviving him his father and mother, naming them, was sufficient to state by inference that they were his heirs, in the absence of a direct allegation to that effect. *Batchoff v. Butte Pacific Copper Co.*, 60 Mont. 179, 198 Pac. 132.

Cited in *Hoppin v. Long*, 74 Mont. 558, 582, 241 Pac. 636; *Raistakka v. Fager-*

strom et al., 64 Mont. 173, 179, 208 Pac. 949; *Mork v. Mellett et al.*, 62 Mont. 477, 481, 205 Pac. 664.

Succession to property as affected by death in common disaster, note, 43 A. L. R. 1348.

Murder of ancestor by heir as affecting intestate succession, note, 51 A. L. R. 1096.

Constitutionality of statute precluding inheritance by one who killed decedent, note, 6 A. L. R. 1408.

Inheritance by, from or through illegitimate, note, 24 A. L. R. 570.

Right of adopted child to inherit from kindred of adoptive parents, note, 38 A. L. R. 8.

Descent and distribution of property of adoptive parents, note, 42 A. L. R. 534.

Estoppel to claim rights in estate of deceased spouse by assent or failure to object to unlawful marriage with third person, note, 28 A. L. R. 1126.

For text treatment of this subject see vol. 9 Cal. Jur. 454.

7079. Same—Degrees in direct line.

This and section 7080 were cited in *Raistakka v. Fagerstrom et al.*, 64 Mont. 173, 179, 208 Pac. 949.

7088. Aliens may inherit, when and how.

Though under this section a resident alien may take by succession as a citizen, under section 2291, United States Revised Statutes, patent to homestead land can issue only to citizens of the United States, and therefore the alien mother of an entryman who died intestate before final proof had been made was not entitled to take a one-half interest in the homestead under a patent subsequently issued to the decedent's heirs and devisees.

Mork v. Mellett et al., 62 Mont. 477, 205 Pac. 664.

Right of alien enemy to take by inheritance, notes, 11 A. L. R. 162; 51 A. L. R. 896.

Inheritance from aliens as proper subject of treaty regulations, notes, 4 A. L. R. 1391; 17 A. L. R. 637.

For text treatment of this subject see vol. 1 Cal. Jur. 923.

CHAPTER 26.

WATER RIGHTS—APPROPRIATIONS.

7093. What waters may be appropriated.

Chapter 185, L. 1907, regulating the method by which appropriations of water from adjudicated streams could be made, was not, but chapter 228, L. 1921, amendatory thereof, is exclusive. *Donich et al. v. Johnson et al.*, 77 Mont. 229, 250 Pac. 963.

See *Mettler v. Ames Realty Co.*, 61

Mont. 152, 201 Pac. 702, for history of water right legislation and discussion of riparian rights. Cited in *Jeffers v. Montana Power Co. et al.*, 68 Mont. 114, 139, 217 Pac. 652.

For text treatment of this subject see vol. 25 Cal. Jur. 1007.

7094. Appropriation must be for a useful purpose.

The right of an appropriator of water is measured by the capacity of his system of distribution, regardless of his needs. *Tucker v. Missoula Light & Ry. Co. et al.*, 77 Mont. 91, 250 Pac. 11.

Cited in *Thomas et al. v. Ball et al.*, 66 Mont. 161, 166, 213 Pac. 597.

For text treatment of this subject see vol. 26 Cal. Jur. 175, 243.

7095. Point of diversion may be changed.

Actual diversion of water and its beneficial use existing, prospective or in contemplation, constitute an appropriation, which is not affected by a change in the point of diversion or place of use. *Wheat et al. v. Cameron et al.*, 64 Mont. 494, 210 Pac. 761.

Under this section the location of a flume maintained over the land of another, as well as the use of the water flowing through it, may be changed, provided the change adds no new burdens

to the servient estate or causes additional damage thereto. *Pioneer Mining Co. v. Bannack Gold Mining Co.*, 60 Mont. 254, 198 Pac. 748.

Cited in *Tucker v. Missoula Light & Ry. Co.*, 77 Mont. 91, 99, 250 Pac. 11; *Thomas et al. v. Ball et al.*, 66 Mont. 161, 166, 213 Pac. 597.

For text treatment of this subject see vol. 26 Cal. Jur. 172.

7096. Water may be turned into natural channels.

Cited in Donich et al. v. Johnson et al., 77 Mont. 229, 240, 250 Pac. 963; Jeffers

v. Montana Power Co. et al., 68 Mont. 114, 139, 217 Pac. 652.

7097. Return of surplus water to stream.

Where a party has all the water his necessities require or that his ditches will carry, it is immaterial that he has a right, under decree or otherwise, to a greater flow from the stream; he must permit the excess to remain in the stream or be returned to it in such a manner that it will be available to subsequent appropriators. *Tucker v. Missoula Light & Ry. Co. et al.*, 77 Mont. 91, 250 Pac. 11.

Cited in *Zosel v. Kohrs et al.*, 72 Mont. 564, 576, 234 Pac. 1089; *Allen v. Petrick et al.*, 69 Mont. 373, 379, 222 Pac. 451; as section 4844, Revised Codes, in *Pioneer Mining Co. v. Bannack Gold Mining Co.*, 60 Mont. 254, 265, 198 Pac. 748.

For text treatment of this subject see vol. 26 Cal. Jur. 133.

7101. Diligence in appropriating.

Where an appropriator of water from an adjudicated stream, disclaiming any right to the use of its normal flow but relying upon an alleged notice of appropriation made in 1917 of surplus and flood waters in a lake (formed by the widening of the channel of the stream) impounded by means of a dam, did nothing by way of construction of a dam or a ditch until the latter part of 1921, he did not acquire any right under the appropriation, having failed to proceed with

the diligence required by either section 4848, Revised Codes of 1907, referring to appropriations of water generally, or section 4871, with relation to appropriations from an adjudicated stream, in completing his appropriation. *Anaconda Nat. Bank v. Johnson et al.*, 75 Mont. 401, 244 Pac. 141.

For text treatment of this subject see vol. 26 Cal. Jur. 81.

7108. Miner's inch equivalent in gallons.

Cited in *Allen v. Petrick et al.*, 69 Mont. 373, 385, 222 Pac. 451.

7113. Owners of water to sell surplus.

Sections 7113-7116 were cited in *Allen v. Petrick et al.*, 69 Mont. 373, 379, 222

Pac. 451; *Jeffers v. Montana Power Co. et al.*, 68 Mont. 114, 139, 217 Pac. 652.

7117. Dam or reservoir to be securely constructed.

Sections 7117, 7118 were cited in *Donich et al. v. Johnson et al.*, 77 Mont. 229, 240, 250 Pac. 963.

7119. Procedure for appropriation waters of adjudicated streams.

The method prescribed by sections 7119-7127 for making an appropriation of the waters of an adjudicated stream is exclusive as to appropriations made after

the passage of that act. *Anaconda Nat. Bank v. Johnson et al.*, 75 Mont. 401, 244 Pac. 141.

7122. Decree subject to prior adjudications. If the defendants, or any of them, do not appear, their adjudicated rights which are prior in time to plaintiff's right shall in nowise be affected by the court's order. The court shall in every case, if an appropriation be awarded plaintiff, provide that the same shall be subject to all adjudicated rights which are prior in time to plaintiff's rights, and the plaintiff shall be bound by the terms of all prior decrees with respect to water rights in the proper order of his priority as if he had been a party to the decree originally.

Amd. Sec. 1, Ch. 38, L. 1927.

7124A. Petition to establish rights after decree. At any time after the entry of any decree, any person, not a party to such decree, who, prior to the entry of such decree, had or claimed a valid water right upon the stream or source of supply affected by such decree, or who subsequent to the entry of such decree has made a valid appropriation of water from said stream or source of water supply affected by such decree, may petition the court which entered such decree for an order making him a party to such decree and establishing his right thereunder, and in relation to the other rights affected by such decree. Upon filing such petition, such notice shall be given and procedure had as is provided in sections 7119, 7120, 7121, 7122, 7123 and 7124 of this code.

En. Sec. 2, Ch. 38, L. 1927.

7128. Effect of decree upon subsequent appropriations.

Under this section the court in water right suits is not bound by a stipulation of the parties as to the general character and quality of the soil of their respective

lands or the amount of water required for their successful and economical irrigation. Cited in *Allen v. Patrick et al.*, 69 Mont. 373, 222 Pac. 451.

7129. Appropriations of water subject to prior decrees adjudicating rights.

Sections 7129, 7130 were cited in *Donich et al. v. Johnson et al.*, 77 Mont. 229, 244, 250 Pac. 963.

CHAPTER 27.

WATER COMMISSIONERS—DETERMINATION OF JOINT RIGHTS.

7136. Appointment of water commissioners. Whenever the rights of persons to use the waters of any stream, ditch or extension of ditch, watercourse, spring, lake, reservoir, or other source of supply have been determined by a decree or decrees of a court of competent jurisdiction, it shall be the duty of the judge of the district court having jurisdiction of the subject matter, upon the application of the owners of at least ten per cent of the water rights affected by the decree or decrees, in the exercise of his discretion, to appoint one or more commissioners, who shall have authority to admeasure and distribute to the parties bound by the decree or decrees the waters to which they are entitled, according to their rights as fixed by such decree or decrees. At the time of the appointment of any water commissioner or water commissioners, his or their fees and compensation must be fixed in the order.

Amd. Sec. 1, Ch. 125, L. 1925.

Under the rule that a special statutory remedy is not exclusive but cumulative only, unless the intention to make it so is clearly manifest or it is entirely adequate for the protection of pre-existing rights, section 7136 et seq., providing for the appointment of a water commissioner and prescribing his duties and powers, does not provide an exclusive remedy for one whose water rights have been im-

paired and therefore do not preclude him from maintaining an action for damages. *Tucker v. Missoula Light & Ry. Co.*, 77 Mont. 91, 250 Pac. 11.

Incompatibility of offices of colonel and water commissioner or water superintendent, note, 26 A. L. R. 144.

For text treatment of this subject see vol. 25 Cal. Jur. 1013.

7140. Power of commissioners in admeasuring water expenses. Every water commissioner appointed by the judge of the district court

for that purpose shall have the authority to admeasure and distribute to the parties interested, under such decree or decrees, the water to which those who are parties to the decree or decrees, or privy thereto, are entitled according to their priority as established by the decree or decrees. The water commissioner, in case the parties fail or refuse to do so, may incur necessary expenses in the making of headgates or dams for the distribution of the waters, and such expense shall be assessed against and paid by the party or parties for whom such services in the repair of the ditch or ditches, and the making of any dams or headgates, were necessary. Provided, that in the discretion of the court, such costs or expenses may be assessed against the land upon which or for the benefit of which such expense had been incurred.

Amd. Sec. 2, Ch. 125, L. 1925.

7145. Charges and expenses. The judge may also allow as a charge any expenses necessarily incurred by the water commissioner in the discharge of his duties in the employment of extra labor for the repair of dams, headgates, ditches, or flumes, when immediate action is necessary to preserve the rights of the parties entitled to the waters of such stream or when the judge has, in the order appointing the commissioner, required the commissioner to repair ditches, and keep in repair necessary headgates, ditches, or flumes. The water commissioner shall report all such expenses, and the cost thereof shall be taxed against the party or parties for whose benefit the same were incurred, provided, that in the discretion of the court, such costs or expenses may be assessed against the land upon which or for the benefit of which such expense had been incurred.

Amd. Sec. 3, Ch. 125, L. 1925.

7147. Apportionment of fees and expenses. Upon the filing of the report by the water commissioner, or water commissioners, the clerk of court shall forthwith notify each person mentioned in such report, by letter, of the amount he is made liable for by such report, and that objections to such report, and the amount so taxed against him, may be made by any person interested therein, within twenty days after the date of the mailing of said notice, and unless objections thereto are filed, an order will be made by the judge of said court finally fixing and determining the amount due from each of said water users. The affidavit of the clerk that he has mailed a notice to each person mentioned in the report at such person's last known postoffice address, in the usual manner, shall be deemed prima facie evidence that the person received that notice provided for in this section.

Amd. Sec. 1, Ch. 11, L. 1923; Amd. Sec. 1, Ch. 45, L. 1927.

7148. Order of court—Hearing and determination. At the expiration of the twenty days' notice as provided for in the preceding section, if objections to said report have been filed, or a motion to retax the same has been made, the court or judge shall fix a time for the hearing of such objections or motion to retax, which time of hearing shall be as soon as the judge or a court can conveniently hear the same. Any person object-

ing to said report shall be entitled to at least five days' notice of the date and time of such hearing. At such hearing the court or judge shall hear and determine the motion or objections, and shall make an order fixing and determining the amount found due from each of said water users to such commissioner or commissioners. In case no objections are filed within the twenty days as hereinbefore provided for, such order shall be made as a matter of course, and in either case said order shall be final determination of the matter.

Amd. Sec. 2, Ch. 11, L. 1923.

7149. Effect of order fixing fees and compensation—Lessees—Issuance of execution. After the order of the court fixing the fees and compensation and expenses of the water commissioner is final, it shall have all the force and effect of a judgment as against the person to whom the water was admeasured, and for whose benefit it was used. When such expense of commissioner or commissioners has been assessed against the land for which such service of the commissioner or commissioners has been rendered, it shall constitute a lien against said land. Execution may issue upon the order as upon a judgment by direction of the court or judge upon the application of any person interested therein.

Amd. Sec. 4, Ch. 125, L. 1925.

7150. Complaint by dissatisfied user—Procedure. Any person owning or using any of the waters of such stream or ditch or extension of ditch, who is dissatisfied with the method of distribution of the waters of such stream or ditch by such water commissioner or water commissioners, and who claims to be entitled to more water than he is receiving, or is entitled to a right prior to that allowed him by such commissioner or water commissioners, may file his written complaint, duly verified, setting forth the facts of such claim. Thereupon the judge shall fix a time for the hearing of such petition, and shall direct that such notice be given to the parties interested in such hearing as the judge may deem necessary. At the time fixed for such hearing, the judge must hear and examine the complainant and such other parties as may appear to support or resist such claim, and also examine such water commissioner or water commissioners and witnesses as to the charges contained in said complaint. Upon the determination of the hearing, the judge shall make such findings and order as he may deem just and proper in the premises. If it shall appear to the judge that the water commissioner or water commissioners have not properly distributed the water according to the provisions of the decree, then the judge shall give the proper instructions for such distribution. The judge may remove such water commissioner or water commissioners and appoint some other person or persons in his or their stead, if he deems that the interests of the parties in the waters mentioned in such decree will be best subserved thereby, and if it shall appear to the judge that the said water commissioner or water commissioners have wilfully failed to perform their duties, they may be proceeded against for contempt of court, as provided in contempt cases. The judge shall make such order as to the payment of costs of such hearing as may appear to him to be just and proper.

Amd. Sec. 5, Ch. 125, L. 1925.

7151. Users must maintain headgate. All persons using water under a decree from any stream or ditch whereon a water commissioner is appointed shall be required to have suitable headgates at the point wherein a ditch taps a stream, and shall also, at some suitable place on the ditch, and as near the head thereof as practicable, place and maintain a proper measuring box, weir, or other appliance for the measurement of the waters flowing in such ditch. In case any person or persons shall fail to place or maintain a proper measuring appliance, it shall be the duty of such water commissioner not to apportion or distribute any water through said ditch. And provided further that the commissioner must notify all parties interested by registered mail or in person one week before making the annual repair or cleaning of any stream or ditch or performing necessary labor or expenses to divert water to any ditch. The sending of a registered letter to the last known postoffice address of any such interested party will be prima facie evidence of the fact that he was duly notified. Provided, however, that any work in the way of repairing a ditch made necessary by any emergency may be done without such notice when injury would result from delay.

Amd. Sec. 6, Ch. 125, L. 1925.

This section, requiring the installation of headgates and measuring boxes in ditches by persons using water from a stream under a decree where a water commissioner has been appointed, is in the nature of a police regulation, under which the commissioner may refuse to

distribute water to one who fails to do so, but does not license a stranger to appropriate water to his own use therefrom merely because an owner of a right has not complied with such requirement. *Tucker v. Missoula Light & Ry. Co.*, 77 Mont. 91, 250 Pac. 11.

7159. Compensation of commissioner and apportionment thereof—Issuance of execution—Taxation of costs. When a commissioner is appointed upon the application of an owner or owners of such ditch, the court may fix the compensation of such commissioner and the term of his employment, and shall make an order apportioning the amount of such compensation among the several owner or owners, tenants in common or stockholders of said ditch, according to their respective rights and interest, which order shall have the force and effect of a judgment against the person to whom the water as admeasured and for whose benefit it was used, when, in the discretion of the court, such order of apportionment of expense is made against the land for which such water was used, in which event it shall have the force and effect of a lien against said land to which such apportionment was made. Execution may issue upon such order as upon a judgment by direction of the court, upon the application of any person interested therein; provided, however, that when a commissioner is appointed under the provisions of sections 7136-7150, to distribute the waters of the stream from which the waters flowing in said ditch are taken, and to apportion and distribute the waters of said ditch according to the rights of the respective owners thereof, the judge, in his discretion, may in addition to the apportionment taxed against the respective owners of the waters of said stream, apportion and tax the amount, if any, the owners of such ditch shall pay in addition to the amount taxed under the provisions of said sections 7136-7150.

Amd. Sec. 7, Ch. 125, L. 1925.

CHAPTER 29.

IRRIGATION DISTRICTS—ORGANIZATION.

7166. Who may organize districts. Sixty per centum in number of the holders of title or evidence of title to lands sought to be included in an irrigation district and which are susceptible of irrigation, such holders of title or evidence of title also representing sixty per centum of the acreage of said lands, may propose the establishment and organization of an irrigation district under the provisions of this act; provided, however, that when any of such land sought to be included in such irrigation district is covered by mortgage or other lien then the owner or owners of such land shall first procure the written consent of the holder of such mortgage or other lien before proposing the establishment and organization of such irrigation district. Irrigation districts may be formed in order to co-operate with the United States under the federal reclamation laws heretofore or hereafter enacted, or under any act of congress which shall permit of the performance by the United States of work in this state, for the purposes of construction of irrigation works, including drainage works, or for purchase, extension, operation, or maintenance of constructed works, or for the assumption, as principal or guarantor, of indebtedness to the United States on account of district lands. When so organized, such district shall have the powers conferred or that may hereafter be conferred, by law upon such irrigation district, provided, however, that all irrigation districts organized in connection with United States reclamation projects a majority of the holders of title or evidence of title to lands sought to be included in such irrigation district under the provisions of the act, may propose the establishment and organization of such district.

The certificate of the county clerk and recorder, or the certificate of the register of the state land office, shall be sufficient evidence of title for the purpose of this act. Where lands have been purchased from the state and part of all of the purchase money has been paid, but the patents or deeds from the state to such lands have not been issued, the receipt of [or] receipts held by the purchasers, or the certificate of the register of the state land office showing the payments on account of purchase, shall be evidence of title to such lands under this act.

Before any such district shall be established, there shall be presented to the district court at the hearing on the petition for such establishment, a written report or opinion from the state engineer on the engineering features involved and the possibilities of water supplies accompanied by a copy of the decree of the district court showing the adjudicated water rights in said streams from which said waters are to be diverted. For this purpose, a copy of the petition provided for in section 7167 of this code, and of all maps and other papers filed with the same, shall be filed with the state engineer at the time the original petition is filed with the clerk of the district court. The expense, if any, incurred by the state engineer (other than his salary), in his investigation and report upon the proposed district shall be certified, with his report, and that said engineer shall, within a period of one hundred twenty days from the filing of said petition with the state engineer, render his report to the district court, as

herein provided, to the said district court, and shall be assessed as costs in said hearing, which costs shall be paid by the district in event of its establishment and in event such petition be denied, then such costs shall be paid by the petitioners; provided, however, that such report or opinion shall be not requested or obtained, and shall not be necessary, whenever it is proposed to co-operate with the United States under the federal reclamation laws heretofore or hereafter enacted, or under any act of congress which shall permit of the performance by the United States of work in this state, for the purposes of construction of irrigation works, including drainage works, or for purchase, extension, operation or maintenance of constructed works, or for the assumption, as principal or guarantor, of indebtedness to the United States on account of district laws.

Amd. Sec. 1, Ch. 157, L. 1923; Amd. Sec. 1, Ch. 112, L. 1925.

Under the irrigation district statute the bonds of an irrigation district—a public corporation—create a general indebtedness against the district in the sense that all the lands therein are taxable for the payment of the bonds and interest until the entire indebtedness is paid, and therefore the lands of an owner who has paid his assessment are not released from liability for further assessments made necessary by delinquencies of others, until the bonded indebtedness with interest is discharged in full. *Cosman v. Chestnut Valley Irr. Dist.*, 74 Mont. 111, 40 A. L. R. 1344, 238 Pac. 879.

An irrigation district, created under sections 7166-7173, is a public corporation, exercising essentially governmental functions, one of which is the right to levy taxes, and as such must be deemed a subdivision of the state within the meaning of section 4893, thus relieving it from the payment of fees for the recordation of papers in the office of the county clerk and recorder. *Crow Creek Irr. Dist. v. Crittenden*, 71 Mont. 66, 227 Pac. 63.

While the Irrigation District Act confers certain exclusive powers upon the district court of the county in which the business of the district is being conducted, there is nothing in the act which gives exclusive jurisdiction to that court

to compel the treasurer of that county by mandamus to pay interest due upon bonds of the district, and therefore, under the rule above, the court of any other district or county has the power to issue the writ. *State ex rel. Carroll v. District Court et al.*, 69 Mont. 415, 222 Pac. 444.

A proceeding under this section for the extension of an irrigation district is neither an equity case nor a proceeding of an equitable nature, and therefore the testimony need not be presented in the transcript by question and answer, otherwise made necessary by subdivision 3 of Rule VII of the supreme court. *In re Bitter Root Irr. Dist.*, 67 Mont. 436, 218 Pac. 945.

Under the District Irrigation Statute only such lands as will be specially benefited may be included within a proposed district against the will of the owner. *In re Crow Creek Irr. Dist.*, 63 Mont. 293, 207 Pac. 121.

Sections 7166-7264 were cited in *State ex rel. Carroll v. District Court*, 69 Mont. 415, 421, 222 Pac. 444.

Scope and import of term "owner" in statutes relating to formation of irrigation districts, note, 2 A. L. R. 791.

Irrigation district as a municipality within tax laws, note, 17 A. L. R. 81.

For text treatment of this subject see vol. 26 Cal. Jur. 346.

7169. Hearing on petition and appointment of commissioners.

Where in an order establishing an irrigation district the descriptions of the lands included in it were sufficient under this section, the fact that the court went further and made a tabulation under various headings, such as "Gross Area," "Area Included," etc., did not render the order void, such matter having been surplusage which may properly be disregarded under the statutory maxim that "superfluity does not vitiate." *Walden v. Bitter Root Irr. Dist.*, 68 Mont. 281, 217 Pac. 646.

Cited in *Cosman v. Chestnut Valley Irr. Dist.*, 74 Mont. 111, 113, 40 A. L. R. 1344, 238 Pac. 879; *State ex rel. Cartersville Irr. Dist. v. McGraw*, 74 Mont. 164, 165, 240 Pac. 817; *State v. Nicholson*, 74 Mont. 346, 350, 240 Pac. 837; *Crow Creek Irr. Dist. v. Crittenden*, 71 Mont. 66, 69, 227 Pac. 63; *In re Crow Creek Irr. Dist.*, 63 Mont. 293, 298, 207 Pac. 121.

For text treatment of this subject see vol. 26 Cal. Jur. 362.

7171. Organization of board of commissioners—Place of meetings.

The commissioners shall meet within ten days after their appointment and shall organize as a board by the election of one of their number as president; they shall also elect a secretary (who may or may not be a commissioner). The compensation of the secretary and all other employees authorized under this act shall be fixed by the board.

The board shall also at this meeting designate the place where the office of the board shall be established and maintained and its records kept, which place shall be in the county containing the major portion of the lands in the district; and such place shall not be changed except by resolution of the board, of which notice shall be given by at least one publication in some newspaper published or of general circulation in the county wherein the office of the district is located, and by posting in at least three public places in each division of the district.

Amd. Sec. 2, Ch. 157, L. 1923.

7173. Salary of commissioners—Penalty for interest in contracts—Bonds of commissioners. The commissioners, when sitting as a board or when engaged in the business of the district, shall each receive not to exceed five dollars per day for services, and, in addition thereto, their necessary expenses in attending meetings or when otherwise engaged on district business, including premiums on qualifying bonds and any other bonds required of them in connection with their office, provided such expenses and per diem be approved by unanimous vote of said board.

No commissioner or any other officer named in this act shall in any manner be interested directly or indirectly in any contract awarded or to be awarded by the board, or in the profits derived therefrom; and for any violation of this provision, such officer shall be deemed guilty of a misdemeanor and his conviction thereof shall work forfeiture of his office and he shall be punished by a fine not exceeding five hundred dollars or by imprisonment in the county jail not exceeding six months or by both such fine and imprisonment.

The commissioners of said irrigation district shall each furnish a bond in the penal sum of twenty-five hundred dollars (\$2500) with corporate surety conditioned for the faithful performance of their duties under this act, and the secretary shall furnish bond, with corporate surety, in the sum of one thousand dollars (\$1,000) conditioned for the faithful performance of his duties pursuant to this act, and for the proper and safekeeping of the records and documents of said district, in all cases where the obligations of said district, either existing or proposed, total two hundred and fifty thousand dollars (\$250,000) or over. In all other cases the bond for said commissioners shall be in the sum of one thousand dollars (\$1000). Provided that the foregoing bonds shall not be required of any of the commissioners or the secretary of said district in any case where the obligations of said district, either existing or proposed, shall be twenty-five per cent or more owing to the United States in connection with any federal reclamation project.

Amd. Sec. 3, Ch. 157, L. 1923; Amd. Sec. 1, Ch. 116, L. 1927.

CHAPTER 30.

IRRIGATION DISTRICTS—BOARD OF COMMISSIONERS—POWERS, DUTIES AND ELECTION.

7174. The board of commissioners—Their status, powers and duties. The board of commissioners of every irrigation district established and organized under and by virtue of this act shall constitute the corporate authority of said district.

(1) The board shall have the power, and it shall be the duty of the members thereof, to manage and conduct the business and affairs of the district; adopt a corporate seal therefor; make and execute all necessary contracts; employ and appoint such agents, officers, and employees as may be required, and prescribe their duties.

(2) The board and its agents and employees shall have the right to enter upon any land to make surveys, and may locate the necessary irrigation works, including drainage works and the line for any canal or canals, and necessary branches for the same, on any lands which in the judgment of the board may be deemed best suited for such location.

(3) The board shall have power and authority to appropriate water in the name of the district, to acquire by purchase, lease, or contract, water and water rights; additional waters and supplies of water, canals, reservoirs, dams and other works already constructed, or in the course of construction, with the privilege, if desired, to contract with the owner, or owners of such canals, reservoirs, dams and other works so purchased and in the course of construction, for the completion thereof and shall also have power and authority to acquire by purchase, lease, contract, condemnation, or other legal means, lands (and rights in lands) for rights of way, for reservoirs, for the storage of needful waters, and for dam sites, and necessary appurtenances, and such other lands and property as may be necessary for the construction, use, maintenance, repair, improvement, enlargement and operation of any district system of irrigation works.

(4) The board shall have power and authority to enter into, and do any acts necessary or proper for the performance of, any agreements with any state, county, district of any kind, public or private corporation, association, firm or individual, or any number of them, for the joint acquisition, construction, leasing, ownership, disposition, use, management, maintenance, repair, or operation of any rights, works or other property of a kind which might lawfully be acquired or owned by the irrigation district, and may acquire the right to store water in any reservoirs or to carry water through any canal, ditch, or conduit not owned or controlled by the district, and may grant to any owner or lessee of the right to the use of any water the right to store such water in any reservoir of the district or to carry such water through any canal, ditch or conduit of the district.

(5) But no purchase, lease or contract for purchase of any water, or water rights, or canals, or reservoirs, or reservoir sites, or dam sites, or irrigation works or other property of any nature or kind or for the making or purchasing of surveys, maps, plans, estimates and specifications, or for the purchase of machinery for pumping plants, or the erec-

tion of buildings, aqueducts and other structures necessarily used in connection with such pumping plants, for a price or rental in excess of ten thousand dollars, shall be final or binding upon the district, nor shall said sum be paid without the written consent or petition of at least a majority in number and acreage of the holders of title or evidence of title to the lands within the district. Any splitting or division of such purchase, lease or contract with the purpose or intention of avoiding or circumventing the provisions of this section shall render such divided or split contract or contracts absolutely null and void.

(6) For the purpose of acquiring control over government land within the district and of complying with the provisions of the act of congress of August 11, 1916, the board shall have authority to make such investigations, and base thereon such representations and assurances to the secretary of the interior, as may be requisite.

(7) The board may enter into any obligation or contract with the United States for the construction, operation, and maintenance of the necessary works for the delivery and distribution of water therefrom, and of the necessary drainage works; or for the assumption, as principal or guarantor, of indebtedness to the United States on account of district lands, under the provisions of the federal reclamation act and all acts amendatory thereof or supplementary thereto, and the rules and regulations established thereunder; or the board may contract with the United States for a water supply under any act of congress providing for or permitting such contract, and in case contract has been or may hereafter be made with the United States as herein provided, bonds of the district may be deposited with the United States at ninety per cent of their par value, to the amount to be paid by the district to the United States under any such contract, the interest on said bonds of the district and regularly paid to the United States to be applied as provided in such contract, and if bonds of the district are not so deposited, it shall be the duty of the board of commissioners to include as part of any levy or assessment provided for in section 7232, an amount sufficient to meet each year all payments accruing under the terms of any such contract; and the board may accept, on behalf of the district, appointment of the district as fiscal agent of the United States, or authorization of the district by the United States to make collections of moneys for or on behalf of the United States in connection with any federal reclamation project, whereupon the district shall be authorized to so act and to assume the duties and liabilities incident to such action, and the said board shall have full power to do any and all things required by the federal statutes now or hereafter enacted in connection therewith, and all things required by the rules and regulations now or that may hereafter be established by any department of the federal government in regard thereto, including the power to require the prompt payment of all charges as prerequisite to water service.

(8) Said board may also construct and maintain the necessary dams, reservoirs, and works for the collection and distribution of water for the district, from one or more sources and from different and additional sources, and operate such works, and may secure in any of the manners in this act provided additional water supplies from the same or different

sources, and do any and every lawful act necessary to be done in order that sufficient water may be furnished for irrigation purposes to all the lands in the district included at the time of its organization or at any time thereafter.

(9) The board is hereby authorized and empowered to take conveyances or other assurances for all property acquired by it under the provisions of this act, in the name of the district, to and for the uses and purposes herein expressed.

(10) The board is hereby authorized and empowered to institute and maintain any and all actions and proceedings, suits at law or in equity, necessary or proper in order to fully carry out the provisions of this chapter, or to enforce, maintain, protect, or preserve any and all rights, privileges, and immunities created by this act, or acquired in pursuance thereof, and in all courts, suits, or proceedings, the said board may sue, appear, and defend in person or by attorneys, and in the name of such irrigation district.

(11) The board may adopt rules and by-laws governing the calling and holding of meetings of the board, the manner of transacting business thereat, and the publishing or posting of the orders, resolutions, and proceedings of the board. It shall be the duty of said board to pass or adopt by-laws, rules and regulations for the apportionment and distribution of water to the lands of the district, and for the protection and preservation of the works and other property of the district, which shall be printed in convenient form for distribution in the district; and may therein require the prompt payment of all taxes and assessments delinquent for not to exceed two years as a prerequisite to water service. All orders and resolutions shall be passed or adopted by a majority of the commissioners by a yea and nay vote, to be entered upon the records of the board.

(12) For the purpose of purchasing or constructing the necessary irrigation canals or works, or acquiring the necessary property and rights therefor, and otherwise carrying out the provisions of this act, the board of commissioners of any irrigation district must, as soon after such district has been organized as practicable, formulate a general plan for such purchase, construction, and acquisition of such property, and shall cause such surveys, examinations, and plans to be made as shall demonstrate the practicability of such plans, as well as of procuring water from other and different sources, the amount of land that can be irrigated thereunder, and furnish the proper basis for an estimate of the cost of carrying out such plan and the value of any canal, works, property, or system of irrigation proposed to be purchased. All such surveys, examinations, maps, plans, and estimates shall be made by or under the direction and supervision of an irrigation engineer of well-known standing and competency, and all such necessary surveys, examinations, maps, plans and estimates must be certified to by him. When all such are completed, he shall submit them with all proper field-notes to, and file them with, the board of commissioners, accompanied by his report and recommendation thereon. This report shall include a discussion of said plans by him submitted to said board, of the question of water supply, of the sufficiency of the works proposed to accomplish the desired results, of the

practicability of the proposed system from an engineering standpoint, of the probability of being acquired or constructed within the estimate of the cost stated, and such general discussion and recommendation in regard to the engineering and financial features of the whole matter as in the judgment of such engineer shall be desirable for the information of the people of the district. Such report shall be accompanied by a map, when such is necessary for a proper explanation or understanding of the same.

Upon receiving such report, said board of commissioners shall proceed to determine the amount of money necessary to be raised for the purchase or construction of said proposed property, canals, or irrigation works, and system, and within ten days after arriving at such determination shall cause the secretary of said board to notify all persons or corporations holding title or evidence of title to lands within said district (ascertained as provided in section 7166) of the filing of said report and their determination thereon. Said notices shall be given through the United States mail by letter addressed to such person or corporation at the last known postoffice address of each person or corporation aforesaid. A certificate of the secretary of the board as to the fact of mailing said notice, affixed to a copy of said notice and recorded in the record book of said board of commissioners, shall be sufficient and conclusive evidence of such fact.

(13) Said board shall have power generally to do and perform all such other acts as shall be necessary or appropriate to fully carry out the purposes of this act.

Amd. Sec. 4, Ch. 157, L. 1923.

An irrigation district is not a subdivision of the state within the meaning of section 1 of article XIII of the constitution. Therefore a board of commissioners of an irrigation district may acquire shares in a reservoir company or purchase rights to the use of water as authorized by this section. *Thaanum v. Bynum Irr. Dist.*, 72 Mont. 221, 232 Pac. 528.

The taxes which an irrigation district is authorized to levy for the purpose of paying for property acquired are in the

nature of special assessments as distinguished from general taxes, and by the expenditure of moneys authorized by this section, it obtains an equivalent in the value of the property purchased; hence it does not come within the prohibition of section 1, article XIII, of the state constitution. *Thaanum v. Bynum Irr. Dist.*, 72 Mont. 221, 232 Pac. 528.

For text treatment of this subject see vol. 26 Cal. Jur. 403.

7177. Vacancies. In case of a vacancy in the board of commissioners, from any cause, such vacancy shall be filled for the remainder of the term by appointment by the judge of the district court of the county in which the division or major portion thereof is situated. The appointee shall be an owner of land within the district and shall be a resident of the county in which the division of the district, or some portion thereof for which such commissioner so elected, is situated, and shall hold office until his successor is elected and qualified.

Amd. Sec. 5, Ch. 157, L. 1923.

7184. Qualifications of electors. At all elections held under the provisions of this act, except as herein otherwise expressly provided, the following holders of title, or evidence of title, to lands within the district, herein designated electors, shall be entitled to vote:

1. All persons having the qualifications of electors under the constitution and general and school laws of the state;
2. Guardians, executors, administrators, and trustees residing in the state;
3. Domestic corporations, by their duly authorized agents.

In all elections held under this act, each elector shall be permitted to cast one vote for each forty acres of irrigable land, or major fraction thereof, owned by such elector within the district, irrespective of the location of such irrigable lands within the tracts designated by the commissioners for assessment and taxation purposes, or within congressional subdivisions, platted lots or blocks, election precincts or district divisions, but any elector owning any less than forty acres of irrigable land shall be entitled to one vote. Until actual determination of the irrigable area under the plan of reclamation proposed is had, all land included within the boundaries of the district shall be deemed to be irrigable land for election purposes.

Where land is owned by co-owners, said owners may designate one of their number, or an agent, to cast the vote for said owners, and one vote only for each forty acres of irrigable land, or major fraction thereof, shall be cast by said co-owner or agent. Where land is under contract of sale to a purchaser residing within the state, such purchaser may vote on behalf of the owner of said land. When voting, the agent of a corporation, or of co-owners, or the co-owner designated for purpose of voting, or the purchaser of land under contract of sale, as the case may be, shall file with the secretary of the district, or with the election officials, a written instrument of his authority, executed and acknowledged by the proper officers of said corporation, or by said co-owners, or by the owner of such land under contract of sale, as the case may be, and thereupon such agent or co-owner, or purchaser, as the case may be, shall be deemed an elector within the meaning of this act.

Amd. Sec. 6, Ch. 157, L. 1923.

CHAPTER 31.

IRRIGATION DISTRICTS—EXTENSION.

7189. Changes in area of districts—Proceedings.

The intention of the legislature in enacting a statute may not be gained from the wording of any particular section thereof, but only from a consideration of the act as a whole, since it was passed as a whole, and its division into sections is merely a matter of convenient reference. In *re Crow Creek Irr. Dist.*, 63 Mont. 293, 207 Pac. 121.

Where in a statute making a grant of powers the scope and extent of the powers granted are once stated in its early and declaratory sections, the character of the grant as thus disclosed controls and interprets all subsequent sections, and the latter will be understood (unless there be words of restriction and limitation therein) as coextensive with and applicable to the full scope and ex-

tent of the powers theretofore granted. In *re Crow Creek Irr. Dist.*, 63 Mont. 293, 207 Pac. 121.

Under the above rules of construction this section, prescribing the procedure for the extension of an irrigation district already created, when the act is viewed as a whole and liberally construed as provided in section 7262, is not open to the objection that it operates to deny the nonconsenting land owner of his property without due process of law, in that, while providing for a hearing, it makes no provision for granting relief to him. In *re Crow Creek Irr. Dist.*, 63 Mont. 293, 207 Pac. 121.

Cited in *In re Bitter Root Irr. Dist.*, 67 Mont. 436, 441, 218 Pac. 945.

Cited in *In re Crow Creek Irr. Dist.*, 63 Mont. 293, 299, 207 Pac. 121. For text treatment of this subject see vol. 26 Cal. Jur. 372.

7189A. Proceedings to correct orders and decrees. The district court shall retain jurisdiction of any petition presented to establish an irrigation district or to enlarge and increase its boundaries, or to exclude land therefrom, for the purpose of correcting any omissions, defects or errors in the proceedings of said court, and shall have power to correct, and if necessary to amend the order of the district court establishing the district or any order extending the boundaries thereof, or any order excluding lands therefrom, including the description of lands included or intended to be included in the district, or excluded therefrom or intended to be excluded, the boundaries of the divisions into which it is divided, and any other matter which shall be before the court on the application to create the district, or to enlarge or extend its boundaries, or to exclude lands therefrom, and shall have and is hereby granted power and authority on application of the board of commissioners of the district, to correct and amend the terms of any order or judgment of said court so that the same shall conform to the provisions of the statute under the authority of which such order was made. The board of commissioners of any district may adopt a resolution directing its president and secretary to prepare, execute and file with the clerk of the district court a petition which shall set forth the following matters:

(1) The name of the district and a reference to the order in which the defect, error or omission, errors in description of lands included or excluded, or departure from the statute occurred;

(2) A statement of the defects, errors, omissions, irregularities, errors in description of lands included or excluded, or variances from the statutory requirements;

(3) A prayer for an order correcting said defects, errors, omissions or irregularities.

If the error, defect, omission, irregularity or variance is in the description of any land or lands embraced in the district, the petition shall set forth the correct description of said lands, the names of the holders of title, or evidence of title thereto, ascertained in the manner provided in section 7166 of this code; and if any holder is a nonresident of the county or counties in which the district lies, the postoffice address of such nonresident owner, if known. Upon the filing of said petition, the court shall direct notice of the hearing thereof to be given in such manner as shall be deemed necessary to protect the rights and interests of the parties, and after a hearing of any parties intervening, shall enter an order correcting the said defects, errors, omissions, or irregularities; provided, however, that if the defects, errors, omissions or irregularities are in the description of the lands embraced in the district, the district court or judge shall direct the clerk of said court to publish, at least once a week for two successive calendar weeks, in some newspaper published in said county where said petition is filed, a copy of said petition, together with a notice stating the time and place by said district court fixed, when and where a hearing on said petition will be had, and, if any portion of the lands within said district lies within any other county or counties said petition and notice shall be published as above provided in a news-

paper published in each such other county. If there be no newspaper published in such county, such petition and notice may be published in an adjoining county. The first publication of said petition and notice shall be not less than thirty days prior to the time mentioned in said notice for said hearing. If any holder of title or evidence of title to lands within the district is a nonresident of the county or counties in which the district lies, the clerk of said court shall, within three days after the first publication aforesaid, mail a copy of said petition and notice to each such nonresident, whose postoffice address is stated in said petition. The certificate of the clerk of the district court, under the seal of the court, as to the facts of the publishing and mailing of said petition and notice, affixed to a copy of said notice, shall be sufficient evidence of such facts.

At the time specified in the notice the district court, in which the petition aforesaid is filed, shall hear the petition but may adjourn such hearing from time to time, and may continue the hearing for want of sufficient notice or other good cause. The court, upon application of the petitioners or any person or persons interested, shall permit the petition to be amended and may order further or additional notice to be given. Upon such hearing, all persons interested may appear and contest the application for the order prayed for in the petition, and the contestants and petitioners may offer any competent evidence pertinent to the prayer of the petition.

The court may make such changes in the description of the lands embraced within the limits of the district, as may be deemed advisable, or as fact, right and justice may require, but shall not exclude from the district any lands described as a part of said district in the order creating it, after the district has issued bonds or entered into a contract with the United States under section 7174 of this code.

If, on final hearing, it is found by the court that the petition does not substantially comply with the foregoing requirements of this section, or that the facts therein stated are not sustained by the evidence, then the court shall dismiss the petition at the cost of the petitioners, and shall make and enter an order to that effect, but if it is found that said petition substantially complies with said requirements, and that the facts therein stated are sustained by the evidence, the court shall make and enter an order in accordance with the prayer of the petition.

All orders and findings of the district court, made under the provisions of this section, shall be conclusive upon all owners of lands within the district, and shall be final unless appealed from to the supreme court within sixty days from the day of entry of such order. A copy of such order, duly certified to by the clerk of said court, shall be filed for record within thirty days after such order is made and entered with the county clerk and recorder of the county wherein the lands included within such district are situated; provided, however, that there shall be omitted from such copy lands not situated in the county in which such copy is filed.

En. Sec. 1, Ch. 54, L. 1923.

7190. Owner may have taxable acreage fixed — Exception. Whenever any lot, tract, or parcel of land has been heretofore, or may hereafter be, included within the boundaries of any public irrigation district

formed under the laws of this state, and the acreage thereof fixed and stated in the decree for the creation of said district, or in any other proceeding relating thereto, is fixed at a greater number of acres than actually exist within such lot, tract, or parcel of land, or at a greater number of acres than can be irrigated from the reclamation system of said district; or whenever, from any action or proceeding by or on behalf of said district or its commissioners, any such lot, tract, or parcel of land included therein has been or is about to be assessed from a greater acreage than exists therein, or can be irrigated from the reclamation system of said district, the owner or holder of title or evidence of title to said lands, as defined by the irrigation district acts, may have the taxable acreage contained therein fixed and adjudicated as provided for by this act; provided, however, that if any bonds have been issued with the approval, and pursuant to confirmation by the court, then no proceeding for the determination of the acreage shall be allowed to alter or reduce in any manner the acreage subject to the lien of such bonds, in principal or interest, or of the taxes or assessments to meet the interest or principal thereof, while such bonds or the interest thereon are unpaid in whole or in part; but such proceeding may still be allowed to correct or determine acreage subject to taxes or assessments for maintenance and current expenses, and in so far as the latter only are to be affected.

Amd. Sec. 3, Ch. 54, L. 1923.

Sections 7190-7194 were cited in *Walden v. Bitter Root Irr. Dist.*, 68 Mont. 281, 290, 217 Pac. 646.

7191. Procedure for permanent adjudication of acreage. The owner or holder of title or evidence of title, as defined by the irrigation district acts, may file in the district court of the county wherein said lands are situated a petition praying that the acreage of the lands set forth and described in such petition may be permanently fixed and adjudicated, which petition shall set forth:

1. The name or names of the owner or owners, holder or [of] title or evidence of title thereto, who shall be the party or parties plaintiff therein;

2. The names and kind and character of interest of every person, owning, holding, or claiming any right, title, or interest in or to the lands described in said petition, who shall, where they do not appear as parties plaintiff under subdivision 1 hereof, sit as parties defendant;

3. The name of the district in which said lands are included, together with the name of the board of commissioners thereof, and the secretary thereof, and said district, its commissioners and secretary, shall be made parties defendant therein;

4. A statement of the substance of all proceedings, orders, and decrees creating said districts and fixing the acreage of the lands therein described, together with any proceedings of the board of commissioners of said district or its officers relating to the acreage thereof, to such extent as to fully inform the court of the manner and extent to which said lands have been included and taxed or assessed in said district;

5. The actual acreage of the lands described as irrigable from the reclamation system of said district;

6. The excess of acreage complained of;
7. The amount of taxes previously paid on such excess acreage;
8. A general statement of the exact nature of the relief sought, and the grounds therefor.

Amd. Sec. 3, Ch. 54, L. 1923.

7192. Summons—Publication. Upon the filing of such petition, summons shall be issued thereon and served upon all parties defendant thereto, with a copy of the petition attached thereto, in the same manner and in the same form as issued in civil actions.

Whenever any necessary party thereto cannot, after due diligence, be found within the state of Montana, service upon such party or parties may be had by publication of a summons, which shall be obtained, issued and published in the same manner as a published summons in a civil action.

The provisions of the Code of Civil Procedure of the state of Montana, and the rules of pleading and practice applicable to civil action generally, shall apply, so far as applicable, to this proceeding.

If the allegations to such petition be denied, the district court shall, when the time for appearance of the parties defendant thereto has expired, and said parties have appeared by answer or made default, proceed to hear and determine the issues in said proceedings as joined.

Amd. Sec. 3, Ch. 54, L. 1923.

CHAPTER 34.

IRRIGATION DISTRICTS—BONDS.

7208. Limitations on debt—Incurring power.

Cited in State ex rel. Carroll v. District Court, 69 Mont. 415, 418, 222 Pac. 444.

7209. Exemption of irrigation district property.

Quaere: Had the legislature authority to declare by this section that irrigation districts shall not be taxed for state, county or municipal purposes? Crow Creek Irr. Dist. v. Crittenden, 71 Mont. 66, 227 Pac. 63.

in Crow Creek Irr. Dist. v. Crittenden, 71 Mont. 66, 71, 227 Pac. 63.

Irrigation district as a municipality within tax laws, note, 17 A. L. R. 81.

For text treatment of this subject see vol. 26 Cal. Jur. 426.

Sections 7209, 7210, 7215 were cited

7210. Petition for bonds and action thereon. For the purpose of providing the necessary funds for constructing the necessary irrigation canals and works, including drainage works, and works for the generation and distribution of electrical energy within said district, and acquiring the necessary property and rights therefor, and for the purpose of acquiring by purchase, or otherwise, waters, water rights, canals, reservoirs, reservoir sites, and irrigation works, drainage works, and works for the generation and distribution of electrical energy, constructed or partially constructed, and for the purpose of meeting the expense theretofore incurred or to be thereafter incurred incident to such construction or acquisition of such works and property, including administrative, engineering and legal expenses, and for the assumption, as principal or guarantor, of indebtedness to the United States on account of district lands, and

for the purpose of otherwise carrying out the provisions of this act, and of providing a sum sufficient to pay the interest on all of such bonds for five years, or less, the board of commissioners of any district, heretofore or hereafter organized under the provisions of this act, may authorize and issue the negotiable coupon bonds of the district, as and in the manner hereinafter provided. A sum sufficient to redeem or pay all, or any portion, of the existing indebtedness of said district, evidenced by outstanding bonds, delinquent interest coupons and accrued interest, or warrants, and accrued interest on both bonds and warrants, together with all delinquent and accrued interest, whether such indebtedness be due or not due, or which has or may hereafter become payable at the option of the district, or by consent of the bondholders, or by any lawful means, may be included as a portion of the necessary funds for which said bonds are authorized and issued.

No bonds provided for in this section shall be authorized or issued by or on behalf of any irrigation district organized thereunder, and no contract shall be made with the United States as in section 7174 provided, except upon a petition signed by at least sixty per cent in number and acreage of the holders of title or evidence of title to the lands included within said district. Such petition shall be addressed to the board of commissioners; shall set forth the aggregate amount of bonds to be issued, and the purpose or purposes thereof; shall have attached thereto an affidavit verifying the signatures to said petition; and shall be filed with the secretary of the board of commissioners. When bonds, however, are issued for the sole purpose of redeeming or paying the existing and outstanding bonds or warrants, or both, including delinquent and accrued interest, of such district, such bonds may be authorized and issued in the manner provided for by section 7226 of this code.

Upon the filing of such petition, the board of commissioners shall, by appropriate order or resolution, authorize and direct the issuance of the bonds of the district to the amount and for the purpose or purposes specified in the petition, fix the numbers, denominations, and maturity or maturities of said bonds; specify the rate of interest thereon; and whether payable annually or semi-annually; designate the place of payment of said bonds and the interest coupons, within or without the state of Montana; prescribe the form of said bonds and interest coupons to be attached thereto; and provide for the levy of a special tax or assessment as in this act provided on all the lands in the district for the irrigation and benefit of which said district was organized and said bonds are issued, or said contract is to [be] made, sufficient in amount to pay the interest on and principal of said bonds when due and all amounts to be paid to the United States under any contract between the district and the United States, accompanying which bonds of the district have not been deposited with the United States as in section 7174 provided. If contract is to be made with the United States as in section 7174 provided, and bonds are not to be deposited with the United States in connection with such contract, the board of commissioners need not authorize the issuance of bonds, or if bonds are required in addition to such contract, may authorize bonds only for the amount needed in addition to such contract. Such order or resolution shall also provide for the confirmation proceed-

ings in the district court hereinafter mentioned. Provided, however, that none of the proceedings mentioned herein shall be had or accomplished, or in anywise initiated or prosecuted, until all and singular the matters relating to the issuance of bonds for the district shall first have been submitted to and favorably acted upon by the irrigation district bond commission, pursuant to the requirements of sections 7216 as amended, 7217, 7218, as amended, and sections 7219 to 7225, inclusive, all of the Revised Codes Montana 1921; and provided further, that at any time the board of commissioners, or thirty per cent of the holders of title or evidence of title, in number and acreage, to the lands in any district shall have the right to petition the irrigation district bond commission to investigate, inquire into, and pass upon the legality, feasibility or advisability of any proposed bond issue for irrigation districts now or hereafter organized under the provisions of chapter 146, Laws 1909, and acts amendatory thereof and supplemental thereto. Said irrigation district bond commission shall complete and thoroughly report on all matters relevant and pertinent to said issue not later than six months after receipt of petition therefor and said report shall be furnished in writing to petitioners.

Amd. Sec. 7, Ch. 157, L. 1923.

The provisions of the irrigation district law dealing with the subject of the issuance of irrigation district bonds are controlling in dealing with that matter and the provisions of chapter 38, L. 1923 relative to the issuance of amortization

bonds, etc., are inapplicable. *Walden v. Bitter Root Irr. Dist.*, 68 Mont. 281, 217 Pac. 646.

Cited in *State v. Nicholson*, 74 Mont. 346, 351, 240 Pac. 837; *Cosman v. Chestnut Valley Irr. Dist.*, 74 Mont. 111, 114, 40 A. L. R. 1344, 238 Pac. 879.

7211. Procedure for confirmation by district court. Within ten days after the adoption of the order or resolution mentioned in the preceding section the board of commissioners shall file a petition in the district court of the judicial district wherein is located the office of said board, to determine the validity of the proceedings had relative to the issuance of said bonds, and to the levy of said special tax or assessment.

Such action shall be in the nature of a proceeding in rem, and jurisdiction of all parties interested shall be had by notice given as hereinafter provided. Such petition shall set forth (1) generally, the establishment and organization of the district; (2) a certified copy of the petition mentioned in the preceding section; (3) a certified copy of the order or resolution mentioned in the preceding section; (4) a prayer for the confirmation of the proceedings of the board stated in the petition, and for the confirmation of the bond issue and the special tax or assessment levied to pay the bonds and interest thereon. Upon the filing of said petition in the district court, the court or judge shall fix the time for the hearing of said petition, which shall be not less than fifteen days from the date of filing the petition in said court, and shall order the clerk of the court to give notice of the filing of said petition and the date of the hearing thereon, by publication at least once a week for two calendar weeks in a newspaper published or of general circulation in the county where the office of the board of commissioners of the district is situated, and also by posting a written or printed copy of such notice in at least three public places in each division of the district, the first of such publications and such posting to be not less than fifteen days prior to the date fixed for said hearing.

Said notice shall state the substance of the petition and the time and place fixed for the hearing thereon, and that any person interested in or whose rights may be affected by the issuance or sale of said bonds, or the levy of said special tax or assessment, or the proceedings had or to be had by the said board of commissioners with respect to said matters, may, on or before the day fixed for the hearing of said petition, demur to or answer said petition, and may appear at said hearing and contest the granting of the prayer of said petition, and the entry of any order of confirmation pursuant thereto.

Any person interested in or whose rights may be affected by the issuance or sale of said bonds, or the levy of said special tax or assessment, or the proceedings had or to be had by the board of commissioners of the district in connection with said matters, and the entry of any order of confirmation pursuant thereto, may enter his appearance in such proceedings and demur to or answer said petition and contest the granting of the prayer of said petition.

The provisions of the Code of Civil Procedure respecting the demurrer or answer to a verified complaint shall be applicable to a demurrer or answer to said petition. The persons so demurring to or answering said petition shall be the defendants in the proceeding, and the board of commissioners shall be the plaintiff. Every material statement of the petition, not specifically controverted by the answer, shall be taken as true, and every holder of title or evidence of title to lands included in the district failing to answer or demur to the petition shall be deemed to admit as true all the material statements thereto. The procedure in such action shall be determined by the Code of Civil Procedure.

Upon the hearing the district court shall find and determine whether the provisions and requirements of the preceding section have been complied with, and notice of the filing of the petition in the district court and of the time and place of the hearing thereon had been duly given for the time and in the manner herein prescribed, and shall have power and jurisdiction to examine and determine the regularity, legality, and validity of the proceedings had preliminary and relative to the issuance of the bonds, and the levy of the special tax or assessment in the petition mentioned, and the legality and validity of said bonds and special tax or assessment, and any and all actions taken by the board of commissioners in connection with said matters, and shall hear all objections filed to said proceedings, or any part thereof, or to the issuance of said bonds, or the levy of the said special tax or assessment or any portion thereof. The court, in inquiring into the regularity, legality, and validity of said proceedings, shall disregard any error, omission, or other irregularity which does not affect the substantial rights of the parties to said proceedings. The court may ratify, approve, and confirm said proceedings in whole or in part, and may ratify, approve, and confirm said bonds and special tax or assessment, and enter its judgment or decree accordingly. From any such judgment or decree an appeal may be taken to the supreme court at any time within ten days from the entry of such judgment or decree. Such appeal shall be taken, perfected, and heard in the manner prescribed by the Code of Civil Procedure covering appeals from district courts to the supreme court. If no such appeal be taken

within the time aforesaid, or if taken and the judgment or decree of the district court be affirmed by the supreme court, such judgment or decree shall be forever conclusive upon all the world as to the validity of said bonds and said special tax or assessment, and the same shall never be called into question in any court in the state. The costs of said proceedings shall be allowed or apportioned between the parties in the discretion of the court.

Provided however, that none of the proceedings mentioned herein shall be had or accomplished, or in anywise initiated or prosecuted, until all and singular the matters relating to the issuance of bonds for the district shall first have been submitted to and favorably acted upon by the irrigation district bond commission, pursuant to the requirements of sections 7216 as amended herein, 7217, 7218 as amended herein and sections 7219 to 7225, inclusive, all of the Revised Codes, Montana, 1921; and provided, further, that submission to and report by the irrigation district bond commission shall be had only in the matter of the issuance of bonds for construction purposes or for acquisition of construction works, in whole or in part.

Amd. Sec. 1, Ch. 161, L. 1923.

Sections 7211-7214 were cited in *Walden v. Bitter Root Irr. Dist.*, 68 Mont. 281, 293, 217 Pac. 646.

7212. Details relating to bonds. All bonds issued under the provisions of this act shall be payable in gold coin of the United States, of the standard weight and fineness existing at the time of the issue; and shall run for a period not longer than forty years from their date, but may contain a clause providing for their prior redemption and payment, at the option of the board of commissioners of the district, on any interest payment date after five years from their date. Instead of straight maturity bonds, bonds may be issued to mature serially at such times and in such amounts as the board of commissioners shall determine, but no bonds so issued shall run for a longer period than forty years from date of issue. Said bonds shall bear interest from their date until paid at a rate not to exceed six per centum per annum, payable annually or semi-annually, the installments of interest to date of maturity of principal to be evidenced by appropriate coupons attached to each bond. Said bonds and interest coupon shall be payable at such place or places, within or without the state of Montana, as the board of commissioners shall prescribe. Such bonds shall be of such denomination or denominations, and in such form, as the board of commissioners shall prescribe. An issue of bonds is hereby defined to be all the bonds issued in accordance with a resolution or order of the board of commissioners. Each issue of the bonds of a district shall be numbered consecutively as authorized, and the bonds of each issue shall be numbered consecutively. The board of commissioners shall fix the date of said bonds, or may divide any issue into two or more divisions and fix different dates for the bonds of each respective division. The date of any bond must be subsequent to the order or resolution authorizing it and prior to its delivery to a purchaser from the district.

All bonds issued hereunder shall be signed by the president and attested by the secretary of the board under the corporate seal of the district, and each of the interest coupons to be attached to said bonds shall be executed by the original or engraved or lithographed facsimile signatures of said president and secretary. Each bond shall be signed, and each interest coupon shall be executed, by the president and secretary of the board of commissioners who may be in office at the date of said bond and coupons, or at any time thereafter prior to the delivery of said bond to the purchaser thereof from the district.

The board of commissioners may provide for the registration of bonds in their discretion. The secretary of the board of commissioners and county treasurer, each shall keep a record of the bonds sold, or otherwise disposed of, their date, number, amount, maturity, or maturities, to whom sold, rate of interest, and the place or places of payment thereof.

Amd. Sec. 8, Ch. 157, L. 1923.

7213. Liens of bonds.

Cited in *Cosman v. Chestnut Valley Irr. Dist.*, 74 Mont. 111, 114, 40 A. L. R. 1344, 238 Pac. 879.

7214. Sale of bonds, cancellation. Bonds issued under the provisions of this act shall be issued, negotiated, and sold by or under the direction of the board of commissioners, but shall never be sold for less than ninety per cent of their par value and accrued interest thereon to date of delivery. The said board may sell said bonds from time to time in such quantities as may be necessary and most advantageous to raise money for the purposes for which said bonds were issued.

Before making any sale the board shall, at a meeting by resolution, declare its intention to sell a specified amount of the bonds, and the day and hour and place of such sale, and shall cause such resolution to be entered in the minutes, and notice of the sale to be given, by publication thereof at least once a week for three successive calendar weeks in some newspaper in the county where the office of the board of commissioners is located, and in any other newspaper within or without the state at its discretion. The notice shall state that sealed proposals will be received by the board at its office, for the purchase of bonds, till the day and hour named in the resolution. At the time appointed the board shall open the proposals and award the purchase of the bonds, or any portion or portions thereof, to the highest responsible bidder or bidders; provided, however, that said board may reject any or all bids. In case no award is made, the board thereafter may either re-advertise said bonds, or any part thereof, for sale or sell the same, or any part thereof, at private sale. Coupons evidencing unearned interest shall be detached and canceled.

Any bonds issued hereunder may, in the discretion of the board of commissioners, be issued direct in payment and satisfaction of the contract or purchase price of any irrigation works, canals, water, water rights, or other property constructed or acquired by or for the district, or may be deposited with the United States as in section 7174 provided.

Any bonds which may have been authorized but which have not been sold or deposited as security for funds advanced or to be advanced,

and against which the state, United States, or any other person, firm or corporation shall have no claim to or equity in, may be canceled by the board of commissioners by appropriate resolution or order, and after the cancellation of said bonds the same shall not be sold or otherwise disposed of and shall be invalid and of no effect, and the board shall have no authority to replace such canceled bonds without an authorization from the members of the district similar to that which provided for their issuance.

Amd. Sec. 9, Ch. 157, L. 1923.

7215. Delivery of bonds, and disposition of proceeds of sale. In the event that bonds are sold for cash, they shall be delivered by the board of commissioners to the county treasurer of the county wherein the office of the district is located, who shall deliver them to the purchaser upon receipt of the purchase price therefor, and after making a complete record of the same. Delivery of the bonds sold may be made by the county treasurer to the purchaser at any place or places within or without the state of Montana, and said county treasurer may receive the proceeds of the sale of said bonds at said place or places of delivery. The county treasurer shall thereupon place the proceeds of said sale to the credit of said district; and the same shall be paid out by the county treasurer only upon the written order of the board of commissioners, signed by the president and secretary under the seal of the district. Said proceeds shall be expended for the purpose or purposes for which said bonds were issued, and for no other. Provided, in case any portion of the funds realized from the sale of bonds are not needed immediately for the purpose for which said bonds were issued, the board of commissioners whenever, in its judgment, the same may be to the best interests of the district, shall have the power and authority to direct the investment of such funds, or any portion thereof, in interest-bearing securities of the United States, or of the state of Montana, or in interest-bearing certificates of deposit of national or state banks approved by the state superintendent of banks; provided, however, that in the event of such deposit said banks shall first furnish an indemnity bond to be approved by said board of commissioners and the state superintendent of banks. The county treasurer shall transfer to the credit of the district, and place to the credit of such fund or funds as the board of commissioners may direct, all interest received upon money or securities of the district entrusted to his care.

Amd. Sec. 10, Ch. 157, L. 1923.

7216. Board to adopt resolution—Investigation of issue. (a) Whenever the board of commissioners of any irrigation district organized and existing under and pursuant to chapter 146, Acts of the Eleventh Legislative Assembly and acts amendatory thereof or supplemental thereto, of the state of Montana, shall contemplate the issuance of bonds to defray the expenses of construction or purchase of works for said district, the said board of commissioners shall thereupon adopt a resolution recommending to the district such bond issue, and therein fully and completely state all the terms, conditions and provisions affecting the

same, and the said board of commissioners shall file a certified copy of such resolution with the irrigation district bond commission hereinafter established, at the same time application is made to the irrigation district bond commission, as herein provided.

(b) Before the said board of commissioners shall circulate or cause to be circulated, or before any other person affected by such district shall circulate or cause to be circulated a petition among the landholders of said district authorizing the issuance of bonds of said district for the purposes enumerated in (a) above, the said board of commissioners shall make application to the said irrigation district bond commission, by resolution duly adopted, for a thorough investigation and inquiry into the merits of said proposed bond issue, and into the merits and feasibility of said district and into the propriety and legality of all and singular, the proceedings had therein, and into all matters enumerated in section 7217, Revised Codes Montana 1921.

Amd. Sec. 2, Ch. 161, L. 1923.

7218. Certification by secretary of state—Petitions—Interpretation of act. (a) The written report of the investigation herein provided for shall be filed in the office of the secretary of state, and a copy of said report shall be by the irrigation district bond commission forwarded to the secretary of the district for which the investigation shall have been made, and if said commission shall find, as set out in said report, that the irrigation system of the district and the project for which the bonds under consideration are desired, are feasible, and that the aggregate amount of the bonds under consideration and any other outstanding bonds of said district including bonds authorized, but not sold, does not exceed sixty (60) per centum of the aggregate market value of the lands within said district, and of the water, water rights, canals, reservoir, reservoir sites, and irrigation works owned or to be acquired or constructed with the proceeds of any of said bonds by said district the bonds of such irrigation district, as described and enumerated in said report filed with the secretary of state, shall be certified by the secretary of state, as hereinafter provided for. If the commission shall be notified by the board of commissioners of any district whose irrigation system has been found in such report to be feasible that the district has issued bonds, and the commission shall find that said bonds are for any project or projects approved in such report, and that the amount of said bonds does not exceed the limitation stated in such report, the commission shall prepare and file with the secretary of state a supplementary report giving the numbers, date or dates of issue, and denomination of said bonds, which shall then be entitled to certification by the secretary of state as hereinafter provided for. Subsequent issues of bonds may be made available for the purposes specified in this act upon like proceedings by said district, but after any of the bonds of an irrigation district have been enumerated and described as entitled to certification by the secretary of state as herein provided for, it shall be unlawful for that district to issue bonds that will not be entitled to such certification. It is hereby made the duty of the secretary of state to provide for filing and preserving the reports mentioned in this section, and, also, to make, keep, and preserve a record of the bonds certi-

fied by him in accordance with the provisions of section 7222 of this code, including the date of certification, the legal title of the district, the number of each bond, its par value, the date of its issue and that of its maturity.

Upon the receipt of the report of the irrigation district bond commission, by the secretary of the district, and after the said commission shall make a specific finding in favor of the proposed bond issue, and approve the same as proposed, in its said report, petitions for the authorization of said bond issue may thereupon be circulated and if subscribed by petitioners constituting at least a majority in number and acreage of the holders of title or evidence of title to the lands included within said district, and duly and regularly confirmed by the district court, as provided in sections 7210 and 7211, Revised Codes, Montana, 1921, said bonds may thereupon be issued and offered for sale, provided, however, that no bonds of any irrigation district organized under said chapter 146, Laws 1909, issued for construction purposes, or for acquisition of construction works, in whole or in part shall be offered for sale or exchange or shall be sold or exchanged unless said bonds bear on their face the certification of said irrigation district bond commission.

(b) Nothing contained in sections 7210, 7211, and any other section or provision of said chapter 146, shall be interpreted or construed to [in] any manner authorize the issuance of bonds for said districts so organized under said chapter 146, except and until the provisions of sections 7216-7225, Revised Codes, Montana, 1921, have been fully complied with, and the provisions of said sections 7210 and 7211 shall be operative only after favorable report upon the proposed bond issue by the said irrigation district bond commission. Compliance with this act shall be compulsory upon all districts now or hereafter organized under chapter 146, Laws 1909 and acts amendatory thereof and supplemental thereto.

(c) The legislative assembly of the state of Montana hereby declares that it makes this enactment for the purpose of safeguarding the interests of land owners and landholders within irrigation districts now existing under, or hereafter established under the provisions of said chapter 146, for the promotion of irrigation interests in Montana for insuring districts as financially feasible and as economically and profitably productive, and for preserving the credit and integrity of said landholders and preventing exploitation of said landholders, and of investors in the obligations of said district.

Amd. Sec. 3, Ch. 161, L. 1923.

7220. No expenditure without consent of commission. Whenever the bonds of any irrigation district have been certified as provided in this act, no expenditures shall be made from the proceeds of such bonds, nor shall any liability to be met from such proceeds be incurred, until there shall have been filed with and approved by said commission such a schedule of proposed expenditures of such proceeds as may be necessary to set forth to the satisfaction of said commission the plan proposed for carrying out the purposes for which said bonds were authorized, or such of said purposes as the district may, at the time of filing such schedule, desire to proceed with; and no expenditures from the proceeds of said bonds shall

be made for any purpose not specified in such approved schedule or for any approved purpose in excess of the amount allowed therefor in such schedule without the consent of said commission; nor shall any expense of any kind be incurred in excess of money actually provided by levy of assessment or otherwise.

Amd. Sec. 11, Ch. 157, L. 1923.

Sections 7220, 7223, 7225 were cited in Crow Creek Irr. Dist. v. Crittenden, 71 Mont. 66, 71, 227 Pac. 63.

7224. Expenses. All necessary expenses incurred in making the investigation and report in this act provided for shall be paid as the commission may require, including the salaries and expenses of all necessary assistants, and including the expenses but not the salary of the state engineer, by the irrigation district whose property has been investigated and reported on by the said commission. During the progress of any work to be paid for from the proceeds of any bond issue certified as in this act provided, the state engineer, on behalf of the irrigation district bond commission herein authorized, shall make, or cause to be made, from time to time, at the expense of the district, such inspection of the work as may be necessary to enable the state engineer to know that the plans approved by the commission are being carried out without material modification unless such modification has been approved by said commission. The benefit, however, of any services that may have been performed and any data that may have been obtained by any member of said commission or any other public official, in pursuance of the requirements of any law other than this act, shall be available for the use of the commission herein provided for without charge to the district whose affairs are under investigation.

Amd. Sec. 12, Ch. 157, L. 1923.

7226. Issuance refunding bonds irrigation districts. Any irrigation district heretofore or hereafter created and organized under and by virtue of the provisions of chapter 146 of the Laws of Montana of 1909, as amended, may, whenever deemed advisable and to its interest, issue its negotiable coupon bonds, to be denominated refunding bonds, for the purpose of redeeming or paying the indebtedness, or any portion thereof, of the district, whether represented by existing and outstanding bonds, interest coupons thereof, or warrants, or both, including accrued and unpaid interest on said bonds, coupons and warrants, and whether such indebtedness be due or not due, or which has or may hereafter become payable at the option of the district, or by consent of the bondholders or warrant holders, or both, or by any legal means, and whether such indebtedness be now existing or may hereafter be created, and there shall not be funds in the treasury of such district available for the payment of same.

Such bonds may be authorized and issued in one or more series, and if issued in more than one series, the bonds authorized to redeem or pay the existing and outstanding bonds, and accrued and unpaid interest thereon including interest coupons due and unpaid, together with interest on such coupons, shall be issued in one series, and bonds authorized to

redeem or pay the existing and outstanding warrants, and accrued and unpaid interest thereon, shall be issued in a separate series. If bonds sufficient to redeem or pay the entire existing indebtedness of the district, however evidenced, inclusive of bonds, warrants, and accumulated interest on same, are issued in one series, each bond in said series shall enjoy equal priority of lien. The amount of such refunding bonds to be issued under the provisions of this section, and following sections, shall first be determined by the board and entered in and upon the records of said district prior to the issuance of said refunding bonds.

No refunding bonds for the purpose of redeeming or paying the existing and outstanding bonds, and accrued and unpaid interest thereon, or of redeeming or paying the entire existing indebtedness, in one series, of any district, shall be authorized and issued by or on behalf of such district, except upon a petition signed by at least a majority in number and acreage of the holders of title or evidence of title to the lands included within said district. Refunding bonds, however, for the purpose of redeeming or paying the existing and outstanding warrants of any irrigation district, may be authorized and issued by the board of commissioners of any such district either upon its own motion or upon petition to said board by members of the district. When such bonds are authorized and issued by said board upon petition by the members of the district, such petition (as to form and execution) and all proceedings for the authorization and issuance of such bonds (including the levy of a special tax or assessment to pay the same), shall conform to the requirements of sections 7210 and 7212 of this code, as amended, and court confirmation of such proceedings shall be had in the manner provided for in section 7211 of this code; provided, that where bonds shall be issued for the sole purpose of refunding outstanding warrants, the question of the issuance of such bonds must be submitted to and approved by the district court whose approval shall be given only upon a finding by such court of the legality of such warrants sought to be refunded. The application to the court and the proceeding thereon shall be conducted in the manner provided for in section 7211 of this code, in so far as the same may be applicable. If so approved and confirmed, by the court, the approval of the irrigation district bond commission shall not be required.

Amd. Sec. 13, Ch. 157, L. 1923.

Rep. 29.
7227. Refunding bonds—Form, execution and record. Any bonds so authorized and issued as to form shall conform to the requirements of section 7212 of this code, and shall be signed and the corporate seal affixed, and the coupons shall be executed, and a record of such bonds kept, as by said section required. The board of commissioners may provide, in their discretion, for the registration of such bonds by the county treasurer.

Amd. Sec. 14, Ch. 157, L. 1923.

Rep. 29.
7228. Lien of refunding bonds. When any bonds are authorized and issued to redeem or pay the existing and outstanding bonds, and accrued and unpaid interest thereon, or when bonds are authorized and issued in one series for the purpose of redeeming or paying the entire

existing indebtedness, including bonds and warrants and accumulated interest, of any such irrigation district, such bonds so authorized and issued shall constitute a lien upon the lands within said district, and said lands shall be subject to a special tax or assessment for the payment of the principal and interest of said bonds so authorized and issued, and such tax or assessment shall constitute a first and prior lien on said lands, as provided in section 7213 of this code.

Amd. Sec. 15, Ch. 157, L. 1923.

7229. Lien of bonds to refund warrants. Any bonds issued for the payment or redemption of the existing and outstanding warrants only of said district shall constitute a lien upon the lands within said district, subject to (1) the lien of any bonds then existing and outstanding, (2) the lien of any bonds issued in payment or redemption of existing and outstanding bonds, or (3) the lien of any bonds issued, in one series, in payment or redemption of the entire existing indebtedness, including bonds and warrants and accumulated interest on same; and any special tax or assessment for the payment of the principal and interest of said bonds shall be a lien upon the lands against which levied, subject to the lien of any special tax or assessment for the payment of the principal and interest of existing and outstanding bonds, and bonds issued to pay or redeem any existing and outstanding bonds, and bonds issued in one series to pay or redeem the entire existing indebtedness of said district.

Amd. Sec. 16, Ch. 157, L. 1923.

7230. Sale of refunding bonds — Cancellation. Any bonds issued under the provisions of section 7226 of this code, as amended, shall be authorized, issued, negotiated and sold by, or under the direction of, the board of commissioners, but shall never be sold for less than ninety per cent of their par value and accrued interest thereon to the date of delivery, and the procedure for the sale of such bonds shall conform to the requirements of section 7214 of this code, as amended, as to declaration of intention to sell, notice of sale and conduct thereof. In case no award is made, the board thereafter may either re-advertise said bonds or any part thereof for sale, or sell the same or any part thereof at private sale. Any such bonds may, in the discretion of the board, be exchanged for the bonds and coupons, or warrants, or both, for the payment and redemption of which the same were issued, and in the event of an exchange such bonds shall be delivered and taken at their par value and accrued interest to the time of such exchange, and such exchange may be made by the board of commissioners at any time without the necessity of its declaring its intention to sell the same, or giving notice of sale thereof as provided in section 7214 of this code. Coupons evidencing unearned interest shall be detached and canceled. All district bonds or warrants redeemed under the provisions of this and foregoing sections of this code shall thereupon be canceled by the county treasurer, and a record of such cancellation made in the records of his office.

Any refunding bonds unsold may be canceled by the board of commissioners in the manner provided for in section 7214 of this code as amended.

Amd. Sec. 17, Ch. 157, L. 1923.

7231A. Limitation of actions—Recognition existing districts. No suit, action or proceeding shall be brought in any court in this state attacking the validity or regularity of any order or decree of the court purporting to establish a district hereunder or correcting or amending any order or decree creating a district after the expiration of six months from the date of the recording of the order establishing the district or the order correcting or amending the same, All districts heretofore established by order of the court and having a de facto existence of at least one year, are hereby declared to be valid and legally created subdivisions of the state, and the regularity and validity of the creation of such districts or of the proceedings had for the extension of the boundaries thereof shall not be open to question in any court in this state, and all acts and proceedings of any such district and of its board of commissioners leading up to the authorization, issuance or sale of bonds or the proposed issuance or sale of bonds, are hereby legalized, ratified, confirmed and declared valid to all intents and purposes, and all such bonds whether sold heretofore or hereafter are hereby legalized and declared to be valid and legal obligations of and against the irrigation district so issuing and selling the same, provided, that nothing in this section contained shall be deemed or construed to confirm, approve or validate any warrant issued, or disbursement made, or any contract entered into for the expenditure of money, by the board of commissioners on behalf of any district.

En. Sec. 2, Ch. 54, L. 1923.

CHAPTER 35.

IRRIGATION DISTRICTS—TAXES AND ASSESSMENTS.

7232. Tax or assessment to pay bonds and interest.

Cited in *State v. Nicholson*, 74 Mont. 40 A. L. R. 1344, 238 Pac. 879; *Crow* 346, 350, 240 Pac. 837; *Cosman v. Chestnut Valley Irr. Dist.*, 74 Mont. 111, 114, 66, 69, 227 Pac. 63.

7234. All irrigable lands chargeable alike. All irrigable lands in each irrigation district, except such lands as have been included within such district on account of the exchange or substitution of water, under the provisions of section 7206, shall pay at the same rate for all purposes for which said lands are charged; and except that whenever water used for the irrigation of any lands within an irrigation district shall be obtained by pumping to different elevations, the cost of maintenance, operation, and pumping to each separate elevation shall be apportioned and levied upon the lands lying under the ditch or ditches running from that particular elevation, in such manner as may be determined fair and equitable by the board of commissioners after considering the facts in each case. Such apportionment shall be made by the board of commissioners and included each year in the assessment provided for by section 7235 of this code as amended. The amount of such assessment for maintenance, operation, and pumping of water to each separate elevation, whenever there are different elevations, shall be determined by the board of commissioners in such manner, and upon such notice to the persons interested in said district, as said board in its rules and regulations may

provide; and provided further, that where contract shall have been made with the United States, the lands within the district, whether originally included or later annexed to the district, shall pay in accordance with the federal reclamation laws and the public notices, orders, and regulations issued thereunder, and in compliance with any contracts made by the United States with the owners of said lands; and in compliance further, with the contract between the districts and the United States; and provided further, that where the works necessary for the completed project shall be constructed progressively, over a period of years, and that where a portion of the lands within the district are or can be irrigated one year or more before the completion of the entire project, then and in that case, such lands, so irrigated or that can be so irrigated through the built portion of the project, shall pay for the cost of operating that portion of the project serving them with irrigation water, and also shall pay such portion of the interest charges as its irrigable area bears to the irrigable area of the entire project; and in case of lands having appurtenant thereto a partial water right or partial rights in a system of irrigation other than that of the districts, the amounts payable shall be equitably apportioned.

Amd. Sec. 18, Ch. 157, L. 1923; Amd. Sec. 1, Ch. 136, L. 1925.

7235. Annual tax levy—Apportionment when tracts divided. On or before the second Monday in July each year the board of commissioners of each irrigation district organized hereunder shall ascertain the total amount required to be raised in that year for the general administrative expenses of the district, including the cost of maintenance and repairs, and the total amount to be raised that year for interest on and principal of the outstanding bonded or other indebtedness of the district, including any indebtedness incurred under any contract between the district and the United States accompanying which bonds of the district have not been deposited with the United States as in section 7174 provided, and shall levy against each forty-acre tract or fractional lot as designated by the United States public survey, or platted lot, if land is subdivided in lots and blocks (or where land shall be owned in less than forty-acre tracts or in less than the platted lot, then against each such tract) of land in the district, that portion of the said respective total amounts so to be raised which the total irrigable area of any such tract bears to the total irrigable area of the lands in the district, so that each acre of irrigable land in the district shall be assessed and required to pay the same amount as every other acre of irrigable land therein, unless otherwise specifically provided.

In the event that the ownership of any such forty-acre tract, or other subdivision of land in the district, shall be divided after a special tax or assessment against the same has been levied, each or either of the owners of such tract or subdivisions shall be entitled to have such special tax or assessment equitably apportioned to and against said divisions of such tract or subdivisions, so that each owner shall be enabled to pay such special tax or assessment against his portion of such tract or subdivision, and have the same discharged from the lien thereof.

Not more than four dollars per acre, against each irrigable acre of land in the district, shall be levied in any one year on account of adminis-

trative expenses and cost of maintenance and repairs, but this provision shall not invalidate any warrant lawfully issued or to be issued; provided, however, that this limitation shall not apply to any district supplying water by means of any system other than a gravity system.

Whenever the board of commissioners has provided for the payment of any indebtedness of the district by levy of a special tax or assessment, and thereafter makes provision for the payment of said indebtedness by the issuance of bonds, said board may cancel any portion or all of said levy theretofore made to raise funds to pay said indebtedness; and whenever said board has provided for the payment of any indebtedness of the district by the authorization of bonds and the levy of a special tax or assessment to pay the principal of and interest on said bonds, and thereafter cancels said issue of bonds as provided for in sections 7214 and 7230 of this code, as amended, said board may cancel any portion or all of said levy theretofore made to raise funds to pay the principal of or interest on said bonds so canceled, and refund to the respective persons paying the same the funds, if any, in the custody of the county treasurer collected for the purpose of meeting the principal of and interest on such bonds so canceled.

Any land or lands which may for any reason have escaped assessment in any previous year or years may be assessed or listed for the omitted years and omitted charges, in any subsequent year at the time of the making of the assessment in and for such subsequent year, but no such assessment shall be made later than three years after the occurrence of such omission.

Amd. Sec. 19, Ch. 157, L. 1923.

The apportionment of assessments for administrative expenses, maintenance, repairs, etc., of an irrigation district on the basis of the irrigable area in each tract of land of forty acres or less, prescribed by this section is neither unreasonable nor arbitrary, in view of the fact that that method has had the benefit

of long experience in other states and the consensus of opinion is that no fairer method has been devised. *Walden v. Bitter Root Irr. Dist.*, 68 Mont. 281, 217 Pac. 646.

For text treatment of this subject see vol. 26 Cal. Jur. 415.

7235A. Determination of irrigable area. For the purpose of determining the number of acres of irrigable lands in each forty-acre tract or fractional lot as designated by the United States public survey, or platted lot, if land is subdivided in lots and blocks (or where land shall be owned in less than forty-acre tracts or in less than the platted lot, then against each such tract) of land in the district, the board of commissioners of any irrigation district organized hereunder, whenever deemed advisable and at any time except as otherwise provided, may cause a careful topographical survey and map of said lands to be made, as well as a specific examination of the character of the soil of each such tract. Upon completion of such survey and maps, and examination, the board shall give notice that at a meeting of said board, to be held at the office of the board on a day to be fixed in said notice, said board will determine the irrigable area of each such tract of land in the district and that it will hear and consider any objection on the part of any land owner in the district to such determination and to adjustment of the irrigable area of said district or of any lands within any tract or

subdivision thereof. It shall not be necessary to describe said tracts in said notice. Such notice shall be given by publication, once a week for two successive calendar weeks, in a newspaper of general circulation in the county where the office of the board is located, and where lands of any irrigation district lie in more than one county, such notice shall also be published in a newspaper or newspapers of general circulation in each such county. The last publication of said notice shall be at least five days prior to the date fixed for said meeting.

At such meeting, the board shall proceed to determine and fix the number of acres in each tract or subdivision irrigable from the works or proposed works of the district, and shall hear all persons interested who may appear, and shall continue in session from day to day (exclusive of Sundays and legal holidays) as long as may be necessary and until said determination of irrigable area shall have been completed. The board shall hear all evidence offered, including maps and surveys caused to be prepared by it as well as maps and surveys prepared by any owner of lands. Upon such determination, the irrigable area so fixed shall become, and thereafter be, the acreage upon which any special tax or assessment shall be levied, and each irrigable acre shall pay at the same rate as every other acre of irrigable land in said district shall pay; and any special tax or assessment levied for any purpose shall be a lien upon the entire forty-acre tract or fractional lot as designated by the United States public survey, or platted lot, if land is subdivided in lots and blocks (or where land shall be owned in less than forty acre tracts or in less than the platted lot, then against each such tract) of land in the district of which said irrigable area forms a part, and said lien shall attach to said entire tract as of the first Monday of March in the year in which said special tax or assessment is levied.

Upon completing such determination, the board shall fix, by appropriate resolution or order, the total acreage and the irrigable acreage of each such tract or subdivision, and shall cause to be prepared a list of all lands in said district, which list shall contain an accurate description of each such forty-acre tract or fractional lot as designated by the United States public survey, or platted lot, if land is subdivided in lots and blocks (or where land shall be owned in less than forty-acre tracts or in less than the platted lot, then against each such tract) of land in said district, the total acreage and the number of irrigable acres therein as so fixed and determined, and the name of the owner, or holder of title or evidence of title thereof, ascertained as provided in section 7166 of this code. Such list, when completed and adopted, shall be filed in the office of the board of commissioners and shall remain there for public inspection. A certified copy of such resolution and list shall be filed with the county clerk and recorder of each county in which any portion of the lands in said district are situated; provided, however, there shall be omitted from such copy lands not situated in the county in which such copy is filed.

No special tax or assessment shall be levied against any forty-acre tract, or fractional lot as designated by the United States public survey, or platted lot, if land is subdivided in lots and blocks (or where lands shall be owned in less than forty-acre tracts or in less than the platted

lot, then against each such tract) found by said board to contain no irrigable land; nor shall any lien created after the order of determination herein provided for attach to any such tract, nor shall the owner, or owners, of any tract or tracts have any vote or votes in any proceeding or election under the provisions of chapter 146 of the Laws of 1909, or any amendment thereof, or act supplementary thereto, after the making of such order, unless his said land, or a portion thereof, be found by said board to contain an area irrigable from the works, or proposed works, of said district.

Upon the determination provided for in this section, the board of commissioners shall have the power to refund any taxes paid, or cancel any unpaid taxes or assessments, levied upon an acreage in excess of that so fixed by said order of determination, and where necessary, may issue warrants therefor.

Within sixty days after such resolution adopting said list, the board of commissioners may petition the district court for confirmation of their acts in determining the irrigable area, as aforesaid, and in refunding or canceling any taxes or assessments. The majority in number and acreage of the holders of title or evidence of title to lands in said district, ascertained as in this act provided, may, likewise, within such sixty-day period, petition the district court for review of the actions of the board of commissioners. But one of such proceedings, if prosecuted to determination, shall be exclusive of the other. Upon such proceeding, the court may order any assessment of taxes upon any land or lands to be reduced or raised according to the irrigable area as found by the court, or taxes previously levied upon any area shown to be excessive, to be refunded or canceled. The provisions of section 7189 of this code, regarding the procedure as well as the right and time to appeal, shall apply to any proceeding instituted in pursuance of the provisions of this section; provided, however, that nothing in this section shall be deemed or construed to affect or impair the lien of any bonds issued by the district; and provided, further, that if confirmation proceedings are held and a certified copy of the order of confirmation be filed with the county clerk and recorder of the county in which any portion of said lands are situated, it shall not be necessary to file in said office the certified copy of the resolution and order of the board, or of the list, hereinabove provided for. Provided, however, that where districts have been established in order to co-operate with the United States under the federal reclamation laws heretofore or hereafter enacted, or under any act of congress, which shall permit of the performance by the United States of work in this state, for the purposes of construction of irrigation works, including drainage works, or for purchase, extension, operation, or maintenance of construction works, or for the assumption as principal or guarantor, of indebtedness to the United States on account of district laws, the determination of the irrigable area of the lands in said district may be made by the said board of commissioners in the manner in this section provided or by the United States at the option of the latter, and, if the United States determines the irrigable area, the proceeding for the apportionment and distribution of the costs

of the proposed works or improvements, hereinafter provided for in section 7235B, shall not be had.

En. Sec. 20, Ch. 157, L. 1923.

7235B. Same. Whenever a petition for the issuance of bonds of any irrigation district organized hereunder shall have been filed, as hereinbefore in section 7210 of this code provided, the board of commissioners of such district shall examine, or cause to be examined, each forty-acre tract or fractional lot as designated by the United States public survey, or platted lot, if land is subdivided in lots and blocks (or where land shall be owned in less than forty-acre tracts or in less than the platted lot, then against each such tract) of land in said district, and cause a careful topographical survey and map to be made, in the manner provided for in section 7235A. Upon such examination, the board shall determine the number of irrigable acres in each such tract; and shall apportion and distribute the cost of the works or improvements for which said bonds are to be issued, over the tracts within said district according to the irrigable area in each of said tracts or subdivisions, so that each such irrigable acre shall be required to bear the same burden of such costs as each other irrigable acre in said district, and the special tax or assessment levied to meet the principal of and interest on said bonds so authorized, shall become a lien upon the entire tract of which such irrigable area forms a part or portion as of the first Monday in March of the year in which such special tax or assessment is levied, and the number of irrigable acres in each such tract as so determined shall not be diminished but may be increased during the term for which any such bonds may be issued or until the bonds shall be liquidated in full.

Provided, however, that if a proceeding for the determination, in whole or in part, of the irrigable area of the lands in said district has already been had, or a topographical survey or maps thereof prepared, or a court confirmation of said prior proceedings had, in part or in full, the said board may, in its discretion, adopt all or such portions of said prior proceedings; and in such an event, it shall not be necessary to cause an additional survey, or maps, or examination, of any of such tracts to be again made, or to redetermine the irrigable area of any such tract.

The board shall make such determination after hearing had and shall fix the total acreage and the irrigable acreage, and shall cause a list of such irrigable area to be made and filed and the proceedings of the board in connection with such determination, including said hearing and notice of said hearing, and order or resolution fixing the irrigable area and the preparation and filing of said list shall conform to the requirements set forth in section 7235A. At such hearing, the said board shall also determine the amount and rate per acre necessary to be levied against each irrigable acre in the district to meet the interest on and principal of said authorized bond issue, and any tax levied for such purposes shall be a lien upon the entire tract of which said irrigable area forms a part. If any land owner in the district shall appear before the board at said time and pay in cash the amount fixed against his

said land as its proportion of the amount found necessary for the purposes for which said bonds were authorized and are to be issued, his land shall be excluded from the lien of the bond issue and the amount of bonds intended to be issued shall be reduced by the amount of such payment. Any person interested who shall fail to appear before the board at said meeting shall not thereafter be permitted to contest the proceedings of said board, or any part thereof, except upon special application to the court in the proceedings for the confirmation of said bonds and a showing of reasonable excuse for failure to appear before said board of commissioners.

In case any such land owner makes objection to the proceedings of said board in determining the irrigable area in his own or any other tract of land, or the amount or rate per acre of the special tax and assessment to be levied against each irrigable acre in the district for the purposes of the proposed bond issue, and said objection is overruled by the board, such objection without further proceedings shall be regarded as appealed to the district court, and shall, with the other proceedings of said board at said meeting, be heard at the proceedings to confirm said bonds, as provided in section 7211 of this code, and when so confirmed, said order overruling such objection and confirming the order of the board determining the irrigable area of each tract of land, and apportioning the cost of the improvement thereto, shall become final, binding and conclusive upon said land owner and upon the district, unless appealed from as in said section 7211 provided.

Provided, however, that whenever the irrigable area of the lands in any irrigation district shall have been determined and confirmed, no owner or holder of title or evidence of title to lands in said district, during the period of any bonds thereafter authorized shall be issued and outstanding, shall have the taxable acreage of his said lands fixed or adjudicated in the manner provided by sections 7190, to 7194, inclusive, of this code, in such manner or to such extent as to reduce the acreage subject to the payment of such bonds or interest thereon, or in such manner as to affect the security of such bonds or interest thereon.

En. Sec. 20, Ch. 157, L. 1923.

7235.1. Commissioners may cancel assessments. In any case where the board of commissioners of any irrigation district has made a levy or assessment under the provisions of section 7235 of the Revised Codes of 1921, and included therein any amount due the United States under any contract or agreement for the purchase of any irrigation works or for the operation and maintenance of any irrigation works, or while acting as fiscal agent for the United States or under any authorization of the district by the United States to make collections of moneys for or on behalf of the United States in connection with any federal reclamation project, as provided in section 7174 of the Revised Codes of 1921, and the United States shall thereafter, modify or supplement such contract or agreement so as to eliminate certain charges under said contract or agreement, or so as to make such charges due at a later date or dates than originally provided in said contract or agreement, said board of commissioners are empowered to direct the cancellation of said levy or

assessment theretofore made to raise funds to pay the United States that are under such modification or supplemental contract or agreement made due and payable at a later date or dates.

En. Sec. 1, Ch. 103, L. 1923.

7236. Assessments on federal and other contracts. Where a contract has been entered into or may be hereafter entered into between an irrigation district and the United States the board of commissioners shall have the power to levy assessments against all of the land within the district for any and all of the purposes hereinbefore enumerated, and, in addition thereto, the power to levy assessments against any or all of the lands in said district in compliance with such contract; provided further, that where irrigation works lie partly in the state of Montana and partly in an adjacent state, the board of commissioners may contract with the district or districts in the adjacent state for the mutual construction of works, operation and maintenance of work, drainage and other matters, and things pertaining to said works, and shall have the power to levy assessments against any or all lands within the district necessary to carry out the provisions of such contract.

Amd. Sec. 2, Ch. 103, L. 1923.

7239. County treasurer as custodian of district funds.

Sections 7239, 7240 were cited in State ex rel. Cartersville Irr. Dist. v. McGraw, 74 Mont. 164, 165, 240 Pac. 817; Crow Creek Irr. Dist. v. Crittenden, 71 Mont.

66, 71, 227 Pac. 63; State ex rel. Carroll v. District Court, 69 Mont. 415, 418, 222 Pac. 444.

7240. Collection of taxes or assessments.

Cited in State v. Nicholson, 74 Mont. 346, 351, 240 Pac. 837; State v. McGraw, 74 Mont. 152, 162, 240 Pac. 812; Crow

Creek Irr. Dist. v. Crittenden, 71 Mont. 66, 71, 227 Pac. 63.

7242. Delinquent sale.

Cited in State v. Nicholson, 74 Mont. 346, 351, 240 Pac. 837.

7248.1. Regulation sale irrigation district lands for taxes. At all sales of all lands for delinquent taxes where all, or a portion, of such delinquent taxes are taxes and assessments levied and assessed by any irrigation district against the lands to be sold, the commissioners of such irrigation district, if there be no other bidder for such land at such tax sale, may bid therefor the total amount of all delinquent taxes and assessments, penalty and interest against such land, and thereupon the county treasurer shall strike off said lands to such irrigation district and issue certificate of tax sale to said irrigation district the same as such certificates of tax sales are issued to other purchasers. For the purpose of paying such taxes, assessments, interest and penalties, the commissioners of such irrigation district shall have the power and authority to create by resolution a fund to be known and designated as the "revolving fund for the purchase of tax certificates and titles" and to provide funds for such revolving fund by levy, bond issue or otherwise, and the district may pay such taxes, assessments, interest and penalties

by issuing a warrant to the county treasurer against such fund, provided that there shall be sufficient money in such fund to pay same in full upon demand. When taxes are paid by the district as in this act provided, the county treasurer shall not distribute that portion of said tax belonging to the irrigation district to the several funds as designated in the tax levy and assessment but the total amount due the irrigation district shall be credited by him, to the revolving fund above specified. At the time of the sale by the district of the tax sale certificate or of the property obtained through such certificate, such funds as are realized from such sale must be deposited with the county treasurer and he shall credit the proceeds of such sale, pro rata to the several funds of the district in accordance with the original levy and assessment. No expenditures shall be made from the revolving fund except for the purposes as herein specified and when, by resolution of the board of irrigation district commissioners, such fund shall be deemed inactive, the balance remaining in said fund shall be transferred to a sinking fund to be applied upon any indebtedness which may have been incurred by the district by reason of the creation of such revolving fund, if any there may be.

En. Sec. 1, Ch. 89, L. 1925.

7248.2. District may purchase certificates of tax sale. Any irrigation district may purchase the certificate of tax sale issued to any county for lands sold at tax sale against which any of its taxes and assessments are delinquent or, if deed therefor has issued to the county, may purchase such lands from the county by paying to the county treasurer of the county making the sale all state, county, city, school district, and other delinquent taxes together with penalty, interest and costs of publication and sale. Such payment shall be made by the commissioners of such district issuing and delivering to the county treasurer, a warrant drawn against the revolving fund of said district, provided there shall be sufficient money in said fund to pay same in full upon demand, and thereupon, such treasurer shall assign such certificate of tax sale to such irrigation district as in the case of the purchase thereof by any other person, or the commissioners of the county shall convey such lands to said district in case tax deed therefor has been issued to the county.

En. Sec. 2, Ch. 89, L. 1925.

7248.3. Issuance of tax deeds. When there has been no redemption of the lands so sold at tax sale to an irrigation district or any other person or of the lands struck off to the county for which certificate of sale has been assigned to an irrigation district, or any other person in the manner and within the time hereinafter allowed by this act for the redemption of lands from such tax sales, the county treasurer of the county within which such lands are situated, shall issue tax deed therefor to such irrigation district, or other holder of certificate of sale.

En. Sec. 3, Ch. 89, L. 1925.

7248.4. Commissioners may sell lands—Bids. After the issuance of any such tax deeds to an irrigation district, the commissioner of such

district shall have power to sell and convey the lands so purchased, or any part thereof, at either public or private sale whether the price received therefor equals the amount of delinquent taxes, assessments, penalties, interest and costs against said lands or not; provided that if such lands be offered for sale at public sale that such commissioners may reject any and all bids thereon, and provided further that no such lands shall be sold by said commissioners at private sale until the same shall have been offered for sale at public sale, and that no such lands shall be sold at private sale at a price less than the highest price bid therefor at the public sale at which such lands are offered; and provided further that if no bid is received for such lands when the same are offered for sale at public sale the said commissioners may then sell the same in such manner and for such price as in their judgment they shall deem to be for the best interests of said district.

En. Sec. 4, Ch. 89, L. 1925.

7248.5. Actions to quiet title. If any such lands are conveyed to any irrigation district, it may maintain an action to quiet title to said lands in said district in the manner provided by the laws of Montana for quieting title to real property.

En. Sec. 5, Ch. 89, L. 1925.

7248.6. Commissioners may purchase lands at tax sales—Other powers. In addition to the powers heretofore granted to irrigation districts, the commissioners of every irrigation district, established and organized under and by virtue of the laws of Montana, in addition to the powers heretofore conferred upon them, shall have power to purchase lands within their respective districts sold for nonpayment of taxes and assessments as hereinbefore provided; to purchase certificate of tax sales of such lands when struck off to the county; to take title thereto for their districts; to own, manage, operate, lease, sell and dispose of the same for the use and benefit of their respective districts; to sue and be sued with reference to said lands in the names of their respective districts; to commence, maintain and prosecute suits to quiet title to said lands and any and all other suits in equity or actions at law with reference thereto the same as might be done by any other individual or corporate owners of such lands; and to do any and all other acts or things necessary or beneficial for their respective districts in connection with such lands. The board of commissioners of any irrigation district shall be and they are hereby authorized and empowered to do any and all things necessary to carry out the provisions and intentions of this act.

En. Sec. 6, Ch. 89, L. 1925.

7248.7. Issuance tax deeds. The holder of such certificate of tax sale of such land, whether said holder be an irrigation district or individual, may, at any time after the expiration of two years from the date of sale of said property for delinquency, if same has not been redeemed within said period of two years from date of sale of said lands for delinquency, apply to the county treasurer, as provided by law for the issuance of a tax deed to said property, and upon such application,

the county treasurer shall issue such tax deed, in the manner and form provided by law, to said holder.

En. Sec. 7, Ch. 89, L. 1925.

7248.8. Application of act. This act shall apply only when or after said irrigation district shall have commenced delivery of water to any lands included in such irrigation district.

En. Sec. 8, Ch. 89, L. 1925.

7250. Sale or transfer of lands.

Cited in *State ex rel. Carroll v. District Court*, 69 Mont. 415, 418, 222 Pac. 444.

CHAPTER 38.

IRRIGATION DISTRICTS—APPEALS AND MISCELLANEOUS PROVISIONS.

7255. Unsubstantial errors to be disregarded by court—Rules of procedure—Costs.

Cited in *In re Bitter Root Irr. Dist.*, *Crow Creek Irr. Dist.*, 63 Mont. 293, 301, 67 Mont. 436, 442, 218 Pac. 945; *In re* 207 Pac. 121.

7262. Interpretation of act.

Cited in *In re Crow Creek Irr. Dist.*, 63 Mont. 293, 300, 207 Pac. 121.

CHAPTER 38A.

CREATION OF DISTRICTS COVERING ESTABLISHED IRRIGATION SYSTEM FOR ADMINISTRATION WITHOUT A WATER COMMISSIONER.

7264.1. Declaration purpose of act. It is the purpose and intention of this act, in the furtherance of the public welfare, to provide an effective public agency for the improvement, development, operation, maintenance and administration of certain existing irrigation systems in cases where administration thereof through the agency of a water commissioner is not effective.

En. Sec. 1, Ch. 100, L. 1925.

7264.2. Act applicable to what water owners. This act shall apply only when more than one hundred owners of land, with water rights appurtenant thereto, shall have diverted water by means of a single intake from the source of supply, and shall have provided a single canal for conveying such water to the branches and laterals of an established irrigation system, serving at least one thousand acres of land contiguous in location or of reasonably compact area, and in which the rights to the use of the water shall have been determined by decree of a court of competent jurisdiction.

En. Sec. 2, Ch. 100, L. 1925.

7264.3. Proposal for establishment of district. Whenever the owners of land and water rights, situated as described in section 2 hereof, desire to organize for the purposes mentioned in this act, such owners may propose the establishment and organization of an irrigation district under the provisions of sections 7166 to 7264, inclusive, of the Revised

Codes of Montana of 1921, and amendments thereof and additions thereto, in so far as such laws are applicable hereto and not in conflict with the purposes and provisions of this act.

En. Sec. 3, Ch. 100, L. 1925.

7264.4. Laws not applicable. The provisions of chapter 34, section 7195, section 7202, section 7203, section 7205 and section 7207 of the Revised Codes of Montana of 1921, shall have no application to the organization of irrigation districts hereunder.

En. Sec. 4, Ch. 100, L. 1925.

7264.5. Apportionment of water. The board of commissioners shall apportion the water for irrigation among the lands of the district in a just and equitable manner, and in compliance with the decree adjudicating the rights thereto, but the maximum amount apportioned to any land shall be the amount that can be beneficially used thereon.

En. Sec. 5, Ch. 100, L. 1925.

7264.6. Development of water—Tax limit. The board of commissioners of such irrigation district shall have authority to develop the source of supply and increase the means of distribution of water to the end that all owners of water rights under said system shall receive the amount of water which can be beneficially used upon their lands within the district; provided, however, that not more than four dollars per acre, against each irrigable acre of land in the district, shall be levied in any one year on account of administrative expenses, cost of maintenance and repairs, development of water supply, or enlargement of distribution facilities.

En. Sec. 6, Ch. 100, L. 1925.

7264.7. Tax levy. The annual tax levy, and the apportionment and distribution of the total amount required to be raised in any year shall be had and done in accordance with the provisions and limitations of law applicable to irrigation districts organized under the provisions of sections 7166 to 7264, inclusive, of the Revised Codes of Montana of 1921, and amendments thereof and additions thereto.

En. Sec. 7, Ch. 100, L. 1925.

7264.8. Purpose of act. It is the purpose and intention of this act to extend to irrigation districts organized hereunder the powers, duties and status of the public corporations organized under the irrigation district laws of the state of Montana, as the same may now, or hereafter exist; provided, that neither such districts nor the board of commissioners thereof shall have any power or authority to issue bonds or incur indebtedness, other than warrant indebtedness, under the limitations proposed by law; and provided further, that this law does not contemplate the acquisition by the district of the existing water, water rights or system or works owned by the respective water right owners within the district.

En. Sec. 8, Ch. 100, L. 1925.

7264.9. Districts declared public corporations. Any irrigation district which has been heretofore organized under procedure in substantial compliance with the provisions of this act shall, upon the passage and approval of this act, become a public corporation, with the privileges and powers hereby conferred, to the same extent as if such irrigation district were organized under the authority of this act.

En. Sec. 9, Ch. 100, L. 1925.

CHAPTER 39.

DRAINAGE DISTRICTS.

7265. Petition for creation drainage district—Contents.

Special assessments for the construction and maintenance of drainage works are not taxes within the meaning of section 11, article XII of the state constitution, hence that provision has no application. In re Valley Center Drain Dist., 64 Mont. 545, 211 Pac. 218.

The drainage act does not attempt to delegate legislative power to the judiciary and therefore does not impinge upon section 1 of article IV of the state constitution. In re Valley Center Drain District, 64 Mont. 545, 211 Pac. 218.

Since the situation of the land owner whose property is originally included in a drainage district is so far different from that of the owner whose property is brought into the district after it is created as to furnish the basis for a reasonable classification, the drainage statute is not open to the objection that it discriminates

in favor of the latter by extending to him the right of trial by jury of the question of benefits received or damages suffered, while the same right is denied to the former. In re Valley Center Drain District, 64 Mont. 545, 211 Pac. 218.

Lands may be brought into a drainage district and subjected to the imposition of special assessments to defray the cost of constructing and maintaining the drainage system, on the theory that the use to which the lands are subjected is a public use, the state acting by virtue of its power of eminent domain. In re Valley Center Drain District, 64 Mont. 545, 211 Pac. 218.

Liability of drainage district for personal injuries, note, 33 A. L. R. 77.

For text treatment of this subject see vol. 9 Cal. Jur. 858.

7265A. Procedure for dissolution drainage districts. Whenever the adult owners of more than one-half of the lands within any drainage district, organized under the provisions of sections 7265 to 7364 inclusive of the Revised Codes of Montana, 1921, as amended by chapter 109 of the Session Laws of the Eighteenth Legislative Assembly, shall present to the district court having jurisdiction of said drainage district, a petition signed by them, praying that such drainage district be dissolved, the judge of said court shall cause notice of such petition, together with a copy of said petition, to be served upon the commissioners of said district, directing them to show cause on a day certain, not less than fifteen nor more than thirty days from the date of the filing of said petition, why said petition should not be granted. The judge, at the time of receiving the petition, shall make an order forbidding the commissioners from incurring any further expense, or proceeding with the work of constructing a drain. On said day of hearing the court shall hear the same, and if it appears that the adult owners of more than one-half of the lands in said drainage district have signed said petition, it shall be granted, and thereupon, the court shall make an order directing the said commissioners to file a written report, under oath, setting forth the amount of the debts and obligations of said drainage district. Within thirty days after such report is filed, the court shall cause to be spread,

or spread, a levy against all lands in said district on the basis of the final report of the commissioners, as confirmed by the court, and if no final report has been made, then on an area basis, and also enter judgment dissolving said district, and authorize the commissioners to settle the business of the district on the basis of the final report of said commissioners or on the area basis as confirmed by this court, said commissioners to render their services for same without pay.

En. Sec. 1, Ch. 46, L. 1925.

7268. Hearing—Court to order notice—Publication.

So long as the statute authorizing the construction and maintenance of a drain and the imposition of special assessments to defray the cost thereof provides for notice to every interested land owner and an opportunity for him to be heard before he can be affected adversely, it does not

deprive him of his property without due process of law. *In re Valley Center Drain District*, 64 Mont. 545, 211 Pac. 218.

For text treatment of this subject see vol. 9 Cal. Jur. 862.

7272. Insufficient service—Procedure.

This and sections 7275, 7279, 7280 and 7281 were cited in *In re Valley Center*

Drain District, 64 Mont. 545, 548, 211 Pac. 218.

7273. Service or publication of notice.

Where the bill of exceptions prepared by appellant himself recited that the notice of an adjourned hearing looking to the organization of an irrigation district had been given and served as provided by this section, his contention that the

service was defective does not merit consideration. *In re Valley Center Drain District*, 64 Mont. 545, 211 Pac. 218.

For text treatment of this subject see vol. 9 Cal. Jur. 861.

7280. Court to appoint commissioners—Qualifications. But if it shall appear that the petition has been so signed, the court or judge shall so find and order any necessary amendments thereto, and shall divide the district into three divisions, as nearly equal in area as possible, and shall appoint three suitable and competent persons as commissioners and fix their temporary bonds. In making such appointments one commissioner shall be appointed from each division and each person so appointed a commissioner must be an actual land owner and resident of the county or counties in the division for which he is appointed such commissioner. If the district is situated in two or more counties, not more than two of said commissioners shall reside in one of said counties. Ownership of land within the district shall not disqualify a person from acting as a commissioner.

Ten per cent of the adult owners or legally authorized agents or representatives of minor owners of lands within any drainage district heretofore created and organized, and in existence on the date when this act takes effect, may file a petition with the proper district court to have such district divided into divisions, and such court must thereupon make an order setting a day for hearing such petition, and cause a copy of such order to be served on each of the commissioners of such district at least five days before the date set for such hearing. On the day fixed in such order, or on any day to which such hearing may be regularly continued, the court must hear such petition, and after such hearing must

make an order dividing such district into three divisions, as nearly equal in area as possible.

Amd. Sec. 1, Ch. 50, L. 1925.

Since drainage district commissioners act only in an advisory capacity and their assessments of benefits and damages are reviewable on appeal after notice to all interested parties, the provision of this section, that the fact that a person owns lands in the proposed district shall not

disqualify him from acting as commissioner, does not violate the principle that no one shall be the judge of his own cause. In re Valley Center Drain District, 64 Mont. 545, 211 Pac. 218.

For text treatment of this subject see vol. 9 Cal. Jur. 884.

7282. Term of commissioners. On the creation of a district the commissioners appointed by the judge or court shall hold office until the first Tuesday in May following their appointment, and until their successors are elected. When a district is in existence on the date when this act takes effect and thereafter an order is made dividing such district into divisions the terms of office of such commissioners shall cease with the Monday immediately preceding the first Tuesday in May next following.

Amd. Sec. 2, Ch. 50, L. 1925.

7283. Election term and qualifications of commissioners. The regular election of commissioners shall be held annually on the first Tuesday in April of each year; the term of office of commissioners shall commence on the first Tuesday in May following their election. At the first regular election following the organization of a district, and in districts heretofore organized and in existence on the date when this act takes effect and which, on petition, has been divided into divisions, as hereinbefore provided, at the first regular election following the date of the order making such division, there shall be elected three commissioners, one commissioner being elected from each division of which he must be an actual land owner and resident of the county or counties; one of such commissioners, to be determined by lot, shall hold office until the first Tuesday in May in the year following his election, another of such commissioners, to be determined by lot, shall hold office until the first Tuesday in May in the second year following his election, and the third of such commissioners shall hold office until the first Tuesday in May in the third year following his election; thereafter one commissioner shall be elected each year who shall hold office for a term of three years and until his successor is elected and qualified; provided that the person elected as a commissioner in each year to succeed the commissioner whose term is then expiring must be elected as a commissioner from the same division as the commissioner whom he is to succeed.

Amd. Sec. 3, Ch. 50, L. 1925.

7283A. Notice of election. Fifteen days before any regular election, the secretary of the board of commissioners shall give notice by mail to all land owners within the district of the time and place of holding the election. Prior to the mailing of such notices the board must, by resolution, designate a polling place and appoint three persons to act as judges

and clerks of election in each precinct. The board shall prescribe the form and provide for the printing of the ballots for all elections.

En. Sec. 4, Ch. 50, L. 1925.

7283B. Manner of conducting election. Any judge of election may administer any oath required to be administered during the progress of an election. Before the opening of the polls the judges of election must take and subscribe an oath to faithfully perform the duties imposed upon him by law, and such oath may be administered by any elector. The polls shall open at 12 o'clock noon and be kept open until 5 o'clock P. M. when the same shall be closed. Such elections shall be conducted, except as herein otherwise provided, as nearly as practicable in accordance with the provisions of the general election laws of the state, except that no registration shall be required. As soon as the polls are closed the judges shall count and tabulate the votes cast and make out a certificate, to be signed by them, showing the total number of votes cast at the election and the total number cast for each candidate for commissioner, and shall deliver such certificate, with a list of the electors voting at such election to the board of commissioners, and such board of commissioners shall meet on the first Monday following such election and canvass such returns. The board shall declare elected the person or persons, receiving the highest number of votes. The clerk of the board of directors shall enter the result of such canvass in the minutes of the board and file with the clerk of the district court creating the district a statement showing the names of the persons elected as commissioners, the names of the commissioners whose term will expire on the first Tuesday in May following, and the names of all of the persons who will compose the board of directors for the year next following the said first Tuesday in May.

En. Sec. 4, Ch. 50, L. 1925.

7283C. Qualifications of electors. At all such elections, except as herein otherwise expressly provided, the following persons holding title, or evidences of title to lands within the district shall be entitled to vote: (1) All of the persons having the qualifications of electors under the constitution and general laws of the state; (2) guardians, administrators, executors and trustees residing in the state; (3) domestic corporations by their duly authorized agents. In all elections each elector shall be permitted to cast one vote for each forty acres of land, or major fraction thereof in the district owned by such elector, but any elector owning twenty acres or less shall be entitled to one vote.

En. Sec. 4, Ch. 50, L. 1925.

7283D. Nominations. Candidates for the office of commissioner to be filled by election under the provisions of this act, may be nominated by petition filed with the secretary of the board of commissioners at least ten days prior to date of holding the election and signed by at least five electors of the district. If no nominations are made the electors of the district shall write on the ballots the name or names of the persons for whom they desire to vote, provided that nothing herein contained shall

prevent an elector from voting for any qualified person, although the name does not appear on the official ballot.

En. Sec. 4, Ch. 50, L. 1925.

7284. Vacancies, how filled. If a vacancy occur in the board of commissioners the remaining members of the board shall elect some qualified elector to fill such vacancy and the person so elected shall hold such office for the unexpired term and until his successor is elected and qualified, provided that the person so appointed must be appointed as a commissioner for the division in which such vacancy exists.

Amd. Sec. 5, Ch. 50, L. 1925.

7293. Hearing of preliminary report—Publication of notice.

This and sections 7295, 7297 and 7298 were cited in *In re Valley Center Drain District*, 64 Mont. 545, 549, 211 Pac. 218.

7316. Notice of hearing of report.

This and sections 7319, 7327, 7328, 7338, Center Drain District, 64 Mont. 545, 549, 7340 and 7347 were cited in *In re Valley* 211 Pac. 218.

7340. Procedure to exempt land.

7341. Same—Owner to assert claim—Appeals.

Above sections repealed Sec. 1, Ch. 109, L. 1923.

7342. Illegal assessments—Cost—How defrayed. In case the court decides that any land could not be assessed for drainage purposes or that any assessment or assessments are void, the commissioners shall levy an additional assessment on all of the assessable lands and corporations in said district based on the last assessment of benefits approved by the court, to pay the sum lost to the district by reason of the void assessment, or shall pay said sum out of the general funds of the district.

Amd. Sec. 2, Ch. 109, L. 1923.

7347. Payment or tender of damages—Deposit with clerk of court.

The fact that the drainage statute by this section permits the commissioners to go upon a land owner's property for the purpose of necessary investigation to determine the special benefits received or damages suffered by it, in advance of an award, does not render it obnoxious to the constitutional provision that private prop-

erty shall not be taken or damaged for public use without compensation having been first made to or paid into court for the owner. *In re Valley Center Drain District*, 64 Mont. 545, 211 Pac. 218.

For text treatment of this subject see vol. 9 Cal. Jur. 899.

7354. Assessments against annexed lands.

This and section 7355 were cited in *In re Valley Center Drain District*, 64 Mont. 545, 550, 211 Pac. 218.

CHAPTER 40.

LOCATION AND RECORD OF MINING AND MILL SITE CLAIMS.

7365. Discovery—Notice—Marking Boundaries—Sinking Shaft.

For discussion of sufficiency of the boundaries of a mining location, see *Thompson v. Barton Gulch Mining Co.*, 63 Mont. 190, 207 Pac. 108.

The provisions of this section, calling for the posting of a notice of location of a quartz lode mining claim containing a statement of the number of feet claimed along the course of the vein from the point of discovery, and of section 7366, requiring the recordation of a certificate of location in the office of the county clerk showing the direction and distance claimed along the course of the vein, etc., must be substantially complied with. *Thompson v. Barton Gulch Mining Co.*, 63 Mont. 190, 207 Pac. 108.

This and the following sections modifying to some extent the requirements of the law with relation to the location of

mining claims, go no further than to direct the courts to disregard defects or irregularities in the posted and recorded notice and the failure to do any of the other acts made necessary to complete a location, when it appears that such acts have in fact been done before a location of the same ground has been made by another, and do not excuse the performance of any act, even though the subsequent locator has notice of a prior location which does not comply with the statute. *Ringling v. Mahurin et al.*, 59 Mont. 38, 197 Pac. 829.

What is "top" or "apex" of vein or lode, note, 1 A. L. R. 418.

For text treatment of this subject see vol. 17 Cal. Jur. 316.

7366. Record of certificate of location.

The provisions of this section must be substantially complied with. *Thompson v. Barton Gulch Mining Co.*, 63 Mont. 190, 207 Pac. 108.

Cited as section 2284, Revised Codes, in *Ringling v. Mahurin et al.*, 59 Mont. 38, 46, 197 Pac. 829.

7373. Relocation by owner.

Where relocators of their own claims did not do the excavation work required to be done, under this section, before another had located the same ground, their attempted relocations were nugatory. *Lehman v. Sutter et al.*, 60 Mont. 97, 198 Pac. 1100.

Under this section, the locator or claimant may at any time relocate his own

claim for any purpose other than to avoid the doing of the annual assessment work, provided he complies in all respects with the requirements of sections 7365, 7366 and 7370 of this code. *Lehman v. Sutter et al.*, 60 Mont. 97, 198 Pac. 1100.

For text treatment of this subject see vol. 17 Cal. Jur. 351.

7376. Validating locations heretofore made.

Cited as section 2292, Revised Codes, in *Ringling v. Mahurin et al.*, 59 Mont. 38, 47, 197 Pac. 829.

7377. Defective locations good against person with notice.

In view of the provision of this section that defects in a recorded certificate of location of a mining claim shall not be deemed material where the person relying on the defects made his location with notice thereof, allegations in his complaint, in an action to determine an adverse claim, relating to such defects are

immaterial. *Lehman v. Sutter et al.*, 60 Mont. 97, 198 Pac. 1100.

Cited as section 2293, Revised Codes, in *Ringling v. Mahurin et al.*, 59 Mont. 38, 47, 197 Pac. 829.

For text treatment of this subject see vol. 17 Cal. Jur. 325.

PART V.**Obligations.****CHAPTER 2.****JOINT AND SEVERAL, CONDITIONAL AND ALTERNATIVE OBLIGATIONS.****7399. Contribution between joint parties.**

Cited in *Anderson v. Border et al.*, 75 Mont. 516, 527, 244 Pac. 494.

7402. Conditions precedent.

Cited in *Broat Lumber Co. v. Van Houten*, 66 Mont. 478, 480, 213 Pac. 1116.

7403. Conditions concurrent.

This section and 7405 were cited in *Weatherman v. Reid*, 62 Mont. 522, 525, 205 Pac. 251.

7405. Performance, etc., of conditions—When essential.

Where delivery of chattels and payment for them were to be concurrent, plaintiff in an action for breach of contract was required to show an offer and ability to pay for and receive them at the place of delivery before he could put defendant in default. *Weatherman v. Reid*, 62 Mont. 522, 205 Pac. 251.

Before plaintiffs could put the defendant in default for failure to make a payment due March 1, 1918, on a contract for the sale of real estate, it was necessary that they should plead and prove

that they should comply with their agreement to secure authority to execute and deliver the deed. *Henderson et al. v. Daniels*, 62 Mont. 363, 205 Pac. 964.

Cited in *Peterson v. Nelson*, 77 Mont. 539, 553, 252 Pac. 368; *Ray et al. v. Divers et al.*, 72 Mont. 513, 516, 234 Pac. 246; *Broat Lumber Co. v. Van Houten*, 66 Mont. 478, 480, 213 Pac. 1116.

For text treatment of this subject see vol. 6 Cal. Jur. 396.

7408. Conditions involving forfeiture—How construed.

While, generally speaking, forfeitures are not favored in the law and by this section, it is provided that a condition involving a forfeiture must be strictly interpreted against the party for whose benefit it is created, in the case of an oil and gas lease of the nature of the above forfeiture is favored rather than frowned upon because of the injury that may result to the lessor from delay, where it clearly appears that the lessee has failed

to commence operations within the time stipulated or thereafter neglected to prosecute such operations with diligence. *Solberg v. Sunburst Oil & Gas Co.*, 76 Mont. 254, 246 Pac. 168.

Cited in *Henderson et al. v. Daniels*, 62 Mont. 363, 373, 205 Pac. 964.

For text treatment of this subject see vol. 6 Cal. Jur. 362.

CHAPTER 3.**TRANSFER OF OBLIGATIONS.****7413. Burden of obligation not transferable.**

Cited in *Forbes v. Mid-Northern Oil Co.*, 74 Mont. 368, 372, 240 Pac. 818.

7414. Rights arising out of obligation transferable.

Cited in *Capital F. Corp. v. Metropolitan L. L. Co.*, 75 Mont. 460, 464, 243 Pac. 1061.

7415. Non-negotiable instrument may be transferred.

Cited in *Newer v. First Nat. Bank of Harlem*, 74 Mont. 549, 556, 241 Pac. 613.

7418. Same—Covenant for benefit of property.

Sections 7418, 7419 were cited in *Thomas v. Standard Development Co.*, 70 Mont. 156, 175, 224 Pac. 870.

7423. Apportionment of covenants.

Sections 7423, 7424 were cited in *Thomas v. Standard Development Co.*, 70 Mont. 156, 175, 224 Pac. 870.

CHAPTER 4.

EXTINCTION OF OBLIGATIONS BY PERFORMANCE, OFFER OF PERFORMANCE AND PREVENTION OF PERFORMANCE.

7424. Obligation extinguished by performance.

Cited in *Hale et al. v. Belgrade Co., Ltd.*, 75 Mont. 99, 114, 242 Pac. 425.

7427. Effect of directions by creditors.

Under this section, declaring that where a creditor directs his debtor to perform his obligation in a particular manner and it is so performed, the obligation is extinguished even though the creditor does not receive any benefit therefrom, and other sections, held that where a creditor directed his debtor (his niece) to transfer property to her daughters in payment of the debt without consideration moving from them to him and the transfer was made, a finding that it was based on the consideration of natural love and affection only was erroneous, the consideration having been the extinguishment of the debt due from the grantor to her creditor. *Hale et al. v. Belgrade Co., Ltd.*, 75 Mont. 99, 242 Pac. 425.

Bank's breach of duty in accepting depreciated or illegal currency in payment of commercial paper held for collection, note, 19 A. L. R. 588.

Custom or previous dealing as imposing an obligation upon a party to a contract to accept something else in pay-

ment in lieu of cash, note, 8 A. L. R. 1268.

Purchaser's right to opportunity to pay in cash where tender has been made in other medium, notes, 11 A. L. R. 811; 46 A. L. R. 914.

Accommodation party's payment of paper by note as affecting his rights against accommodated party, note, 36 A. L. R. 590.

Bank officer's right to take his own paper in payment of another's debt to bank, note, 28 A. L. R. 666.

Validity of note to pay fine or penalty, note, 29 A. L. R. 7.

Clearing-house transactions as payment of check, note, 12 A. L. R. 998.

Payment of taxes by check or draft, note, 44 A. L. R. 1234.

Tender by check, note, 51 A. L. R. 393.

Acceptance of cashier's check from debtor as absolute or conditional payment, notes, 36 A. L. R. 470; 42 A. L. R. 353; 45 A. L. R. 1487.

For text treatment of this subject see vol. 20 Cal. Jur. 910.

7429. Payment, what constitutes.

Cited in *Brennan v. Northern Electric Co. et al.*, 72 Mont. 35, 40, 231 Pac. 388.

7430. Application of general performance.

Under this section, a debtor owing more than one debt or a debt consisting of more than one item (as principal and interest) has the right to direct application of a payment voluntarily made by him, and if the creditor accepts the payment and retains it, the law will treat it as having been applied as directed. *Monidah Trust v. Hruze et al.*, 62 Mont. 444, 205 Pac. 232.

Under the terms of a promissory note, a creditor had the right to insist upon the payment of interest and on default to declare the entire indebtedness due. He chose to accept partial payments with full knowledge that in each instance specific directions for its application had been given by the debtor. Held that he ought not to be heard to say that he did not consent and give credit according to

such directions. *Monidah Trust v. Hruze et al.*, 62 Mont. 444, 205 Pac. 232.

Cited in *Conrad Mercantile Co. v. Siler*, 75 Mont. 36, 40, 241 Pac. 617.

Application of insurance moneys received by mortgagee to payment of mortgage debt, note, 11 A. L. R. 1295.

Rights of surety or guarantor after application of payments has once been made to secure debt as affected by change of application by creditor and principal debtor, note, 21 A. L. R. 712.

Application of payments as between debts for which a surety or guarantor is bound and those for which he is not, notes, 21 A. L. R. 704; 49 A. L. R. 952.

Right of debtor who pays creditor to control application of payments made by latter to his creditor with proceeds of original payment, note, 41 A. L. R. 1297.

Right to have usurious payments made on previous obligation applied as payment of principal on renewal, note, 13 A. L. R. 1244.

For text treatment of this subject see vol. 20 Cal. Jur. 931.

7434. To whom to be made.

Where the memorandum evidencing an account stated is silent as to the place of payment, the law, under this section and 7435, imports into the writing and makes part of it by implication a provision that the debtor must, in order to perform his obligation, pay or tender payment to the creditor where the latter may then reside or conduct his business or may be found, and in such a case denial of a motion to change the venue to the place of the debtor's residence or place of business is proper. *Hough v. Rocky Mountain Fire Ins. Co.*, 70 Mont. 244, 224 Pac. 858.

Necessity of tender to avoid interest on insurance premiums, note, 35 A. L. R. 1252.

Inability of other party to produce paper or other thing to be surrendered as condition of tender, as excusing actual tender, note, 14 A. L. R. 1120.

When instrument deemed payable at "special place," within the provision of the Uniform Negotiable Instruments Law making ability and willingness to pay at such place equivalent to tender, note, 24 A. L. R. 1050.

For text treatment of this subject see vol. 6 Cal. Jur. 406; vol. 24 Cal. Jur. 520.

7435. Where offer may be made.

Applied with section 7434 in *Hough v. Rocky Mountain Fire Ins. Co.*, 70 Mont. 244, 224 Pac. 858.

7439. Offer to be made in good faith.

Cited in *Nielson v. Hendrickson et al.*, 63 Mont. 518, 523, 210 Pac. 905.

7440. Conditional offer.

Under this section an offer of performance must be free from any condition which the other party is not bound to meet; hence the lessee of land for oil and gas exploration under a contract which *inter alia* provided that moneys to be paid by him should be paid to the lessor or deposited in bank for his credit was not excused from making payment of delay money by the refusal of the lessor to execute an indemnity bond assuring proper apportionment of the money among grantees of portions of the lands sold

after execution of the lease, the transferees having taken subject to its provisions; the lessee, by making payment as provided, would have been released from all claims by the transferees and was therefore in no position to insist upon acceptance of the condition prior to making payment. *Thomas v. Standard Development Co.*, 70 Mont. 156, 224 Pac. 870.

For text treatment of this subject see vol. 6 Cal. Jur. 407.

7441. Ability and willingness essential.

Cited in *Brennan v. Northern Electric Co. et al.*, 72 Mont. 35, 40, 231 Pac. 388.

7450. Effect of offer on accessories of obligation.

Cited in *Leonard v. Western et al.*, 74 Mont. 513, 518, 241 Pac. 523; *Brennan v. Northern Electric Co. et al.*, 72 Mont. 35, 40, 231 Pac. 388.

CHAPTER 5.

EXTINCTION OF OBLIGATIONS BY ACCORD AND SATISFACTION, NOVATION AND RELEASE.

7456. Accord defined.

Accord and satisfaction means the substitution of a new agreement in satisfaction of an obligation different from the original rights existing under an antecedent liability. *Hale et al. v. Belgrade Co., Ltd., et al.*, 75 Mont. 99, 242 Pac. 425.

"Accord and satisfaction" means the substitution of a new agreement in satisfaction of an obligation different from

the original rights existing under an antecedent liability. *Nelson v. Young et al.*, 70 Mont. 112, 224 Pac. 237.

Sections 7456-7458 were cited in *Hale et al. v. Belgrade Co., Ltd.*, 75 Mont. 99, 114, 242 Pac. 425; *Nelson v. Young et al.*, 70 Mont. 112, 117, 224 Pac. 237.

For text treatment of this subject see vol. 1 Cal. Jur. 125.

7458. Satisfaction, what constitutes.

Cited in *Nelson v. Young et al.*, 70 Mont. 112, 117, 224 Pac. 237.

7460. Novation defined.

For essential allegations in pleading a novation, see *Kirkup v. Anaconda Amusement Co.*, 59 Mont. 469, 17 A. L. R. 441, 197 Pac. 1005.

Cited in *Silver v. Morin*, 74 Mont. 398, 401, 240 Pac. 825; *First State Bank v. Larsen*, 65 Mont. 404, 411, 211 Pac. 214.

This and the following section were

cited as sections 4958, 4959, Revised Codes, in *Kirkup v. Anaconda Amusement Co.*, 59 Mont. 469, 489, 17 A. L. R. 441, 197 Pac. 1005.

For text treatment of this subject see vol. 20 Cal. Jur. 245.

7461. Modes of novation.

From his acceptance of a new note from the defendants for one executed by their father, a novation resulted which barred plaintiff payee from thereafter enforcing a trust which he might otherwise have relied upon to secure payment of the original note. *Larson v. Marcy et al.*, 61 Mont. 1, 201 Pac. 685.

Cited in *First State Bank v. Larsen*, 65 Mont. 404, 411, 211 Pac. 214.

Renewal note made or indorsed by personal representative of obligor in original note as novation of that paper, note, 12 A. L. R. 1546.

For text treatment of this subject see vol. 20 Cal. Jur. 246.

7462. Novation a contract.

Cited in *Silver v. Morin*, 74 Mont. 398, 401, 240 Pac. 825; *First State Bank v. Larsen*, 65 Mont. 404, 411, 211 Pac. 214.

CHAPTER 6.

DEFINITION OF A CONTRACT.

7468. Essential elements of contract.

Cited in *Alley v. Butte & Western Mining Co.*, 77 Mont. 477, 486, 251 Pac. 517; *Petroleum Co. v. G. Cambell-Kevin Syndicate*, 75 Mont. 261, 269, 242 Pac. 540; *Newer v. First Nat. Bank of Harlem*,

74 Mont. 549, 554, 241 Pac. 613; *Baltimore Process Co. v. Red Lodge Brewing Co.*, 66 Mont. 407, 409, 213 Pac. 798; *Butler v. Peters*, 62 Mont. 381, 386, 26 A. L. R. 560, 205 Pac. 247.

CHAPTER 7.

PARTIES TO A CONTRACT.

7472. When contract for benefit of third person may be enforced.

To entitle a person not a party to a contract between two others to recover thereunder, the contract must, under this section have been made expressly for his benefit, the fact that it may incidentally benefit him being insufficient to bring him within the terms of the section. *Martin v. American Surety Co. et al.*, 74 Mont. 43, 238 Pac. 877.

To entitle a third person to enforce a contract made between two others, under this section, the complaint must show that it was expressly made for his benefit, or for the benefit of a class of persons to which he belongs, i. e., he, or they, either must be named therein or otherwise sufficiently described or designated; the fact that the contract may incidentally benefit him or them, being insufficient. *McKeever et al. v. Oregon Mtg. Co., Ltd.*, 60 Mont. 270, 198 Pac. 752.

Under this section, a bond executed by a contractor under a construction contract, entered into by the state highway

commission in accordance with sections 1783-1802, created no obligation in favor of a materialman which it could enforce in its own name. *Federal Surety Co. v. Minneapolis Steel & Mach. Co.*, 17 Fed. (2d) 242.

Under this section as construed by the supreme court of Montana, which construction is binding upon the federal courts, a contract to come within the scope of the statute, must be one wherein the promisor undertakes to pay or discharge some debt or duty which the promisee owes to the third person, and where no consideration passes from the third person, but the provision for his benefit is voluntary on the part of the promisee, he cannot maintain an action for its enforcement. *McNaught v. Hoffman*, 274 Fed. 918.

For text treatment of this subject see vol. 6 Cal. Jur. 469.

CHAPTER 8.

CONSENT.

7473. Essentials of consent.

Under this section, the consent of a party to a contract must be free; it is not free when obtained through menace (section 7475), and under section 7478, a threat of unlawful confinement of the person threatened constitutes menace. *Clifford v. Great Falls Gas Co.*, 68 Mont. 300, 216 Pac. 1114.

Cited in *Averill Machinery Co. v. Taylor et al.*, 70 Mont. 70, 77, 223 Pac. 918.

Mistake in lease as ground for relief, note, 26 A. L. R. 472.

Mutuality as essential element of oral

contract of insurance, note, 15 A. L. R. 999.

Mutuality of contracts for co-operative marketing of farm products, notes, 33 A. L. R. 251; 47 A. L. R. 942.

Mutuality of sales-agency contract as affecting rights and remedies upon cancellation, note, 32 A. L. R. 211.

Restrictive covenant in contract of employment as affected by lack of mutuality of obligation, note, 20 A. L. R. 869.

For text treatment of this subject see vol. 6 Cal. Jur. 41.

7475. Apparent consent—When not free.

Cited in *Averill Machinery Co. v. Taylor et al.*, 70 Mont. 70, 77, 223 Pac. 918.

Cited in *Clifford v. Great Falls Gas Co.*, 68 Mont. 300, 305, 216 Pac. 1114.

7477. Duress—In what it consists.

Cited in *Clifford v. Great Falls Gas Co.*, 68 Mont. 300, 305, 216 Pac. 1114.
As section 4975, Revised Codes, in

Anderson v. McClenathan, 62 Mont. 387, 393, 205 Pac. 230.

7478. Menace—In what it consists.

A threat to prosecute one for a crime of which he is not guilty constitutes

menace. *Averill Machinery Co. v. Taylor et al.*, 70 Mont. 70, 223 Pac. 918.

Testimony of plaintiff relative to threats alleged to have been made to him by the agents of a gas company, by which \$200 was obtained from him by said company, examined and held to show acts constituting a menace under this section.

Clifford v. Great Falls Gas Co., 68 Mont. 300, 216 Pac. 1114.

For text treatment of this subject see vol. 6 Cal. Jur. 66.

7479. Fraud, actual or constructive.

Sections 7479-7481 were cited in *Courtney v. Gordon*, 74 Mont. 408, 418, 241 Pac. 233.

7480. Actual fraud, acts constituting.

Where a party who claims to have been deceived to his prejudice by false representations had the means at hand to ascertain whether the statements made were true or not, but failed to do so, his reliance upon the representations, however false, affords him no ground of complaint. *Helena Adjustment Co. v. Clafin*, 75 Mont. 317, 243 Pac. 1063.

For statement of elements of actual fraud, see *Courtney v. Gordon*, 74 Mont. 408, 418, 241 Pac. 233.

Essentials of a pleading in an action or defense for fraud in procuring a contract of sale to be made, stated in *Ray et al. v. Divers et al.*, 72 Mont. 513, 234 Pac. 246.

Allegations in an action to rescind a contract for the sale of city lots on the ground of fraud perpetrated by the vendor in procuring the scrivener to insert in the deed numbers of inside lots instead of corner lots intended to be bought, were sufficient to charge actual fraud. *Campana v. Dobry*, 60 Mont. 240, 221 Pac. 540.

For definition of the elements constituting actionable fraud, see *Connelly Co. v. Schlueter Bros. et al.*, 69 Mont. 65, 220 Pac. 103.

For statement of the elements of actual fraud in a contract for sale of land, see

Healy v. Ginoff et al., 69 Mont. 116, 220 Pac. 539.

To make out a case of prima facie fraud sufficient to go to the jury, the plaintiff must show a false representation by the defendant, its materiality and defendant's knowledge of its falsity or ignorance of its truth, his intent that it should be acted upon by the plaintiff in the manner reasonably contemplated, his reliance upon its truth, his right to rely thereon and his consequent and proximate injury. *Lee v. Stockmen's National Bank et al.*, 63 Mont. 262, 207 Pac. 623.

The mere making of a promise which the promisor fails to keep does not constitute actionable fraud, intention not to keep it when made being necessary to constitute the promisor's action fraudulent under this section. *International Harvester Co. v. Merry*, 60 Mont. 498, 199 Pac. 704.

Cited in *Morehouse v. Northern Land Co.*, 68 Mont. 96, 102, 216 Pac. 792.

Promises and statements as to future events as fraud, note, 51 A. L. R. 81.

Advertisements of seller as mere matter of opinion or dealer's talk, note, 28 A. L. R. 999.

For text treatment of this subject see vol. 6 Cal. Jur. 68; vol. 12 Cal. Jur. 707.

7482. Actual fraud a question of fact.

The question of fraud is always one of fact for the jury unless the evidence is uncontradicted and it is impossible to draw any inference from it other than that it entered into the particular transaction, whereupon it becomes one of law for the court. *Williams v. Mutual Life Ins. Co.*, 61 Mont. 66, 201 Pac. 320.

Cited in *Harrison v. Riddell et al.*, 64 Mont. 466, 478, 210 Pac. 460; *Lee v. Stockmen's Nat. Bank et al.*, 63 Mont. 262, 284, 207 Pac. 623; as section 4980, Revised Codes, in *Williams v. Mutual Life Ins. Co. of N. Y.*, 61 Mont. 66, 72, 201 Pac. 320.

7483. Undue influence—In what it consists.

Essential elements of undue influence sufficient to invalidate a will, stated in *Hale v. Smith*, 73 Mont. 481, 237 Pac. 214.

7485. Mistake of fact.

Fraud generally cannot be successfully predicated on a matter of law, since parties are presumed to know the law; hence

a representation made by one to a land owner in his endeavor to secure an oil and gas lease, that he already owned all the

oil and gas on the land by reason of placer locations, amounting to an expression of the legal effect of the placer locations, was insufficient to support an allegation of fraud in that respect. *Hinerman v. Baldwin*, 67 Mont. 417, 215 Pac. 1103.

Cited in *Humble v. St. John et al.*, 72 Mont. 519, 523, 234 Pac. 475.

For text treatment of this subject see vol. 6 Cal. Jur. 81.

7496. Ratification of contract void for want of consent.

Cited as section 4994, Revised Codes, in *Larson v. Marcy et al.*, 61 Mont. 1, 8, 201 Pac. 685.

7497. Assumption of obligation by acceptance of benefits.

Cited in *McConnell v. Blackley*, 66 Mont. 510, 515, 214 Pac. 64; *Stone-Ordean-*

Wells Co. v. Anderson et al., 66 Mont. 64, 69, 212 Pac. 853.

CHAPTER 9.

OBJECT.

7501. When contract wholly void.

In an action to quiet title to an interest in a ditch and water right, based upon conversations had by plaintiff with defendant, for work done on the ditch by him, evidence of plaintiff as to the alleged contract held so indefinite and uncertain, under this section, as not to constitute an enforceable agreement, it not appearing therefrom what amount of work plaintiff was to perform, or in which one of several ditches he was to have an interest, etc. *Thrasher v. Schreiber*, 77 Mont. 221, 250 Pac. 600.

A covenant in a lease of a building which required the lessee to complete the

upstairs portion thereof without any specifications as to how it was to be completed, whether for office, living-room or storage purposes, or as to the kinds of materials to be used, etc., held so vague and uncertain as to be incapable of enforcement and therefore void under this section. *Alderson v. Republican-Courier Co.*, 69 Mont. 271, 221 Pac. 544.

Cited in *McDonald et al. v. McNich et al.*, 63 Mont. 308, 313, 206 Pac. 1096.

For text treatment of this subject see vol. 6 Cal. Jur. 149.

CHAPTER 10.

CONSIDERATION.

7503. Good consideration, what constitutes.

Forbearance to sue is a sufficient consideration to support a contract, provided there be an agreement, express or implied, to that effect, mere nonaction being of no avail. *Doorly v. Goodman*, 71 Mont. 529, 230 Pac. 779.

The loss sustained by a debtor in agreeing to make an assignment for the benefit of his creditors was a sufficient consideration for his release from liabilities owing by him to them, under this section in that he suffered a prejudice which he was not lawfully bound to suffer. *Stone-Ordean-Wells Co. v. Anderson et al.*, 66 Mont. 64, 212 Pac. 853.

A consideration, present or future, but not past, is essential to the enforcement of a simple contract. *Wilson v. Blair*, 65 Mont. 155, 27 A. L. R. 1235, 211 Pac. 289.

Cited in *Peterson v. Nelson*, 77 Mont. 539, 550, 252 Pac. 368; *Hale et al. v.*

Belgrade Co., Ltd., 75 Mont. 99, 114, 242 Pac. 425; *Rowley v. Mullen*, 74 Mont. 283, 289, 240 Pac. 374; *Lindsay Bros. v. Montgomery et al.*, 68 Mont. 294, 299, 216 Pac. 795; *Wilson v. Blair*, 65 Mont. 155, 167, 27 A. L. R. 1235, 211 Pac. 289; *McConnell v. Blackley*, 66 Mont. 510, 515, 214 Pac. 64; as section 5001, Revised Codes, in *State Bank of Darby v. Pew et al.*, 59 Mont. 144, 153, 195 Pac. 852; *White v. Hulls et al.*, 59 Mont. 98, 103, 195 Pac. 850.

Consideration for contract with producers for co-operative marketing of farm products, notes, 25 A. L. R. 1118; 33 A. L. R. 251; 47 A. L. R. 942.

Consideration for contract or option on purchase of corporate stock by employee for resale to original seller on termination of employment, note, 48 A. L. R. 625.

Adequacy of consideration as necessary to validity of transfer of expectancy, notes, 17 A. L. R. 603; 44 A. L. R. 1466.

Consideration for incoming partner's promise to pay partnership's existing debts, note, 45 A. L. R. 1258.

Consideration for mortgagee's promise to insure mortgagor's interest, note, 41 A. L. R. 1284.

Consideration for agreement by voluntary bailee to procure insurance, note, 26 A. L. R. 1208.

Consideration for restrictive covenant

in contract of employment, note, 9 A. L. R. 1479.

Moral obligation as a consideration for executory promise, note, 17 A. L. R. 1299.

Moral obligation of father as consideration to provide for illegitimate child, note, 39 A. L. R. 438.

Moral obligation as consideration for modification of lease, notes, 43 A. L. R. 1465; 46 A. L. R. 1518.

For text treatment of this subject see vol. 6 Cal. Jur. 165.

7505. Consideration lawful.

Cited in Portland Cattle Loan Co. v. Featherly, 74 Mont. 531, 547, 241 Pac. 322; Baltimore Process Co. v. Red Lodge

Brewing Co., 66 Mont. 407, 409, 213 Pac. 798.

7508. Executory consideration.

Cited in Fitzgerald v. Eisenhauer, 62 Mont. 582, 592, 206 Pac. 685.

7512. Written instrument presumptive evidence of consideration.

While plaintiff in an action on the guaranty of a promissory note need not plead the consideration upon which it was based, where he does so and introduces proof in support of the allegation, the fact must be determined, not upon the presumption of consideration declared by this section, but upon the proofs offered. Doorly v. Goodman, 71 Mont. 529, 230 Pac. 779.

A written instrument is presumptive evidence of a good and sufficient consideration and the burden of showing a want of consideration sufficient to sup-

port it lies with the party seeking to invalidate it on that ground. Saint et al. v. Beal, 66 Mont. 292, 213 Pac. 248.

Cited in Allen v. Montana Refining Co., 71 Mont. 105, 120, 227 Pac. 582; Guerin v. Sunburst Oil & Gas Co., 68 Mont. 365, 368, 218 Pac. 949; Hinerman v. Baldwin et al., 67 Mont. 417, 430, 215 Pac. 1103; Schauer v. Morgan et al., 67 Mont. 455, 463, 216 Pac. 347; McConnell v. Blackley, 66 Mont. 510, 514, 214 Pac. 64.

For text treatment of this subject see vol. 6 Cal. Jur. 200.

7513. Burden of proof to invalidate sufficient consideration.

Cited in Hale et al. v. Belgrade Co., Ltd., 75 Mont. 99, 112, 242 Pac. 425; Doorly v. Goodman, 71 Mont. 529, 536, 230 Pac. 779; Allen v. Montana Refining Co., 71 Mont. 105, 120, 227 Pac. 582; Schauer v. Morgan et al., 67 Mont. 455, 464, 216

Pac. 347; Hinerman v. Baldwin et al., 67 Mont. 417, 430, 215 Pac. 1103; McConnell v. Blackley, 66 Mont. 510, 516, 214 Pac. 64; Dils v. Brooks et al., 66 Mont. 346, 349, 213 Pac. 600; Saint et al. v. Beal, 66 Mont. 292, 297, 213 Pac. 248.

CHAPTER 11.

MANNER OF CREATING CONTRACTS—ORAL AND WRITTEN CONTRACTS.

7519. What contracts must be in writing.

Under the rule that where a contract is capable of performance within one year it is not invalid under the statute of frauds, because not in writing, an oral agreement made between plaintiff and defendant in the late fall to run a band of lambs as partners until they became yearlings (in the spring following) and if they should then take a "notion" they would continue the arrangement, was wholly optional with the parties and might have been fully executed within

one year and hence was not invalid under the provisions of that section. Miles v. Miles, 76 Mont. 375, 247 Pac. 328.

A contract to sell real estate belonging to another for a compensation must, under this section, be in writing, otherwise it is void; and where such a contract is in parol, testimony in support of a cause of action based upon it is inadmissible. Dick v. King, 73 Mont. 456, 236 Pac. 1093.

Part performance of a parol lease of

real property for a term beyond that allowed by the statute of frauds takes it out of the operation of the statute, and taking possession, making alterations in the building and paying the rent agreed upon for a considerable period of time constitute part performance. *Kettlekamp et al. v. Watkins et al.*, 70 Mont. 391, 225 Pac. 1003.

An oral agreement which by its terms is not to be performed within one year from its making is invalid for any purpose and part performance does not take it out of the statute. *Dreidlein v. Manger*, 69 Mont. 155, 220 Pac. 1107.

For discussion of facts constituting performance of a contract sufficient to take it out of the statute of frauds, see *Stillinger v. Kelly*, 66 Mont. 441, 214 Pac. 66; *Mosher et al. v. Sanford-Evans Co.*, 68 Mont. 64, 216 Pac. 811.

Under this section, subdivision 6, an agreement authorizing or employing an agent or broker to sell real estate on commission must be in writing, as must also a subsequent modification of its terms, so long as the contract or modification is executory in character, the rule, however, not applying where the contract has been executed. *Cobb v. Warren*, 64 Mont. 10, 208 Pac. 928.

Since the person to whom an option to buy land is granted acquires no interest in the property itself until he exercises the privilege granted, a contract between the plaintiff and defendant under which the former was to secure the assignment of an option from the holder thereof to defendant did not amount to an employment of plaintiff as a broker or agent to buy land or an interest in land which under subdivision 6, of this section, is required to be in writing, but was one to perform a service which could lawfully be made by parol. *Kramer v. Schmidt*, 62 Mont. 568, 206 Pac. 620.

Under subdivisions 5 and 6 of this section and section 7939, any contract conferring upon an agent or broker authority to make a sale of real estate, must be in writing. *Hartt v. Jahn et al.*, 59 Mont. 173, 196 Pac. 153.

Cited in *McIntyre et al. v. Dawes*, 71 Mont. 367, 375, 229 Pac. 846; *Dreidlein v. Manger*, 69 Mont. 155, 160, 220 Pac. 1107; *Stillinger v. Kelly*, 66 Mont. 441, 443, 214 Pac. 66; *Awbery v. Schmidt*, 65 Mont. 265, 274, 211 Pac. 346; as section 5017, Revised Codes, in *Hartt v. Jahn et al.*, 59 Mont. 173, 181, 196 Pac. 153.

Agreements in relation to exchange or remittance as within statute of frauds, note, 19 A. L. R. 1140.

When is promise made in consideration of marriage within statute of frauds, notes, 10 A. L. R. 321; 21 A. L. R. 311.

Right of vendee who enters under parol

contract to recover for improvements, where vendor refuses to convey, note, 17 A. L. R. 949.

Rights and remedies of one who advances money to purchase real estate under an oral agreement by the vendee to give a mortgage thereon as security, note, 18 A. L. R. 1098.

Necessity of writing to prove agent's authority to enter into a contract to answer for debt of another, note, 27 A. L. R. 621.

Corporation's promise to pay the debts of another corporation whose assets it acquires, note, 15 A. L. R. 1183.

Corporation's promise to pay debts of predecessor, note, 39 A. L. R. 148.

Incoming partner's oral assumption of partnership debts, note, 45 A. L. R. 1273.

Statute of frauds as affecting agreement with subpurchaser of realty, note, 38 A. L. R. 1359.

Necessity of writing to prove agent's authority to make contract not to be performed within one year, note, 27 A. L. R. 623.

Oral contract for year's services as within statute of frauds, note, 27 A. L. R. 663.

Validity of promise to provide for illegitimate child as affected by statute of frauds, note, 39 A. L. R. 447.

Statute of frauds as affecting contract for permanent employment, note, 35 A. L. R. 1440.

Corporate stock subscriptions and contracts for unissued stock as within provisions of statute of frauds dealing with sales of goods, etc., note, 14 A. L. R. 394.

Agreement that attorney shall receive part of land involved as within statute of frauds, note, 21 A. L. R. 352.

Estoppel of one not party to transaction involving real property by failure to disclose his interest in the property, as affected by statute of frauds, note, 50 A. L. R. 685.

Applicability of statute of frauds to joint adventure or partnership to deal in real estate, note, 18 A. L. R. 484.

Parol exception of fixtures from conveyance or lease, note, 14 A. L. R. 1287. Conveyance pursuant to antenuptial parol contract as fraud on creditors, note, 41 A. L. R. 1169.

Lien of vendee for purchase money paid under invalid parol contract, note, 45 A. L. R. 361.

Agreement to release, discharge or assign real estate mortgage as within statute of frauds, note, 32 A. L. R. 874.

Applicability of statute of frauds to agreement to rescind contract for sale of land, note, 39 A. L. R. 294.

Check or note as memorandum satisfying statute of frauds, note, 20 A. L. R. 363.

Pleadings, depositions, testimony or statements in court as constituting a sufficient writing within statute of frauds, note, 22 A. L. R. 735.

Necessity of written statement of price or consideration for sale of goods or choses in action, note, 30 A. L. R. 1163.

Agent of undisclosed principal signing contract as satisfying statute of frauds, note, 23 A. L. R. 932.

Name of principal or of authorized

agent in body of instrument as satisfying statute of frauds where transaction was not conducted by him, note, 28 A. L. R. 1114.

One party, or his agent, as agent of other party for purpose of signing contract or memorandum required by statute of frauds, note, 47 A. L. R. 201.

For text treatment of this subject see vol. 6 Cal. Jur. 224; vol. 12 Cal. Jur. 848.

7520. Effect of written contracts.

Where a party seeks to recover on a written contract of sale resort must be had to it alone, under this section, in determining the obligations assumed by defendant in attaching his name to it. *Lewis v. Aronow*, 77 Mont. 348, 251 Pac. 146.

All oral negotiations relative to the covenant of seisin on a sale of land were superseded by the deed and a contemporaneous writing executed with relation thereto. *Morehouse v. Northern Land Co.*, 68 Mont. 96, 216 Pac. 792.

Under this section and section 10517, when a contract has been reduced to writing its contents cannot be added to, contradicted, altered or varied by parol or extrinsic evidence, and the writing supersedes all oral negotiations concerning its matter which preceded, accom-

panied or led up to its execution. *Webber v. Killorn et al.*, 66 Mont. 130, 212 Pac. 852.

Cited in *Bridges & Co., Inc., v. Bank of Fergus County*, 77 Mont. 524, 533, 251 Pac. 1057; *Swan v. Le Clair et al.*, 77 Mont. 422, 427, 251 Pac. 155; *Wheeler v. James*, 70 Mont. 37, 43, 223 Pac. 900; *Morehouse v. Northern Land Co.*, 68 Mont. 96, 103, 216 Pac. 792; *Leigland v. Rundle L. & A. Co.*, 64 Mont. 154, 164, 208 Pac. 1075; as section 5018, Revised Codes, in *Cook et al. v. Northern Pacific Ry. Co.*, 61 Mont. 573, 586, 203 Pac. 512; *Jepsen v. Gallatin Valley Ry. Co.*, 59 Mont. 125, 140, 195 Pac. 550.

For text treatment of this subject see vol. 6 Cal. Jur. 262.

7521. Contract in writing—Takes effect when.

Cited in *Wheeler v. James*, 70 Mont. 37, 43, 223 Pac. 900; as section 5019, Revised Codes, in *Jepsen v. Gallatin*

Valley Ry. Co., 59 Mont. 125, 140, 195 Pac. 550.

7522. Provisions of chapter on transfers of property.

Cited in *Wheeler v. James*, 70 Mont. 37, 43, 223 Pac. 900.

CHAPTER 12.

INTERPRETATION.

7527. Contracts—How to be interpreted.

The terms of an oil and gas lease must be construed most strongly against the lessee and in favor of the lessor. *Solberg v. Sunburst Oil & Gas Co.*, 73 Mont. 94, 235 Pac. 761.

Cited in *Union Central Life Ins. Co. v. Jensen*, 74 Mont. 70, 76, 237 Pac. 518; *United States Nat. Bank v. Chappell*, 71 Mont. 553, 566, 230 Pac. 1084; *Hinerman*

v. Baldwin et al., 67 Mont. 417, 433, 215 Pac. 1103; as section 5025, Revised Codes, in *Comeford v. U. S. F. & G. Co.*, 59 Mont. 243, 259, 196 Pac. 984; *White v. Hulls et al.*, 59 Mont. 98, 103, 195 Pac. 850.

For text treatment of this subject see vol. 6 Cal. Jur. 253.

7528. Intention of parties—How ascertained.

Cited in *Wandell v. Johnson*, 71 Mont. 73, 76, 227 Pac. 58.

7529. Intention to be ascertained from language.

Sections 7529, 7530, 7532 and 7534 were cited in *Union Central Life Ins. Co. v. Jensen*, 74 Mont. 70, 76, 237 Pac. 518.

Cited in *Wandell v. Johnson*, 71 Mont. 73, 76, 227 Pac. 58; *Hinerman v. Baldwin et al.*, 67 Mont. 417, 433, 215 Pac. 1103; *Emerson-Brantingham I. Co. v. Raugstad*, 65 Mont. 297, 304, 211 Pac. 305; as section 5027, Revised Codes, in *Comeford*

v. U. S. F. & G. Co., 59 Mont. 243, 259, 196 Pac. 984; *State Bank of Darby v. Pew et al.*, 59 Mont. 144, 155, 195 Pac. 852; *White v. Hulls et al.*, 59 Mont. 98, 103, 195 Pac. 850; *Wing et al. v. Brasher* 59 Mont. 10, 19, -94 Pac. 1106.

For text treatment of this subject see vol. 6 Cal. Jur. 273.

7530. Interpretation of written contracts.

Whether a contract is bilateral or unilateral depends upon the intention of the parties, and, when in writing, the intention is to be ascertained from the writing alone if possible, otherwise the usual rules of construction must be applied to ascertain it. *Wandell v. Johnson*, 71 Mont. 73, 227 Pac. 58.

Where the terms of a contract of shipment of livestock were clear and explicit as to where stops should be made for feeding and resting, parol testimony to the effect that it was customary for shippers to have them stop for those purposes at another point was inadmissible. *Cook et al. v. Northern Pacific Ry. Co.*, 61 Mont. 573, 203 Pac. 512.

Cited in *Peterson v. Nelson*, 77 Mont. 539, 550, 252 Pac. 368; *Humble v. St. John et al.*, 72 Mont. 519, 522, 234 Pac. 475; *Wandell v. Johnson*, 71 Mont. 73, 76, 227 Pac. 58; *Wheeler v. James*, 70 Mont. 37, 43, 223 Pac. 900; *Emerson-Brantingham I. Co. v. Raugstad*, 65 Mont. 297, 304, 211 Pac. 305; as section 5028, Revised Codes, in *Cook et al. v. Northern Pacific Ry. Co.*, 61 Mont. 573, 586, 203 Pac. 512; *Comeford v. U. S. F. & G. Co.*, 59 Mont. 243, 259, 196 Pac. 984; *State Bank of Darby v. Pew et al.*, 59 Mont. 144, 155, 195 Pac. 852.

For text treatment of this subject see vol. 6 Cal. Jur. 274.

7532. Effect to be given to every part of contract.

Cited in *Kasun v. Todevich*, 71 Mont. 315, 319, 229 Pac. 714; *Emerson-Brantingham I. Co. v. Raugstad*, 65 Mont. 297, 304, 211 Pac. 305; *Esselstyn v. Meyer & Chapman State Bank*, 63 Mont. 461, 473,

208 Pac. 910; as section 5030, Revised Codes, in *State Bank of Darby v. Pew et al.*, 59 Mont. 144, 155, 195 Pac. 852; *Wing et al. v. Brasher*, 59 Mont. 10, 20, 194 Pac. 1106.

7533. Several contracts—When taken together.

Under this section, providing that several contracts relating to the same matter, between the same parties and made as parts of substantially one transaction, must be taken together, stipulations embodied in a mortgage become a part of the note securing which it is given even though the note contains no mention of the mortgage. *Vande Veegaete v. Vande Veegaete*, 75 Mont. 52, 234 Pac. 1082.

An application to an insurance company for a loan "payable at the home office" of the company, requesting interest coupons to be sent to a certain bank "and at my risk until payments made are actually received by the company at its home office," signed by the applicant, was not a contract within the meaning of this section, providing that several contracts relating to the same matter are to be taken together, and therefore refusal to admit it to be considered in connection

with the note and mortgage executed pursuant to the application was proper. *Denhart et al. v. Union Central Life Ins. Co.*, 74 Mont. 104, 239 Pac. 773.

Several contracts relating to the same matter and made as parts of substantially the same transaction must be taken together for all purposes. *United States Nat. Bank v. Chappell*, 71 Mont. 553, 230 Pac. 1084.

Cited in *Cooper v. Goble et al.*, 77 Mont. 580, 589, 252 Pac. 362; *Peterson v. Nelson*, 77 Mont. 539, 549, 252 Pac. 368; *Leigland v. Rundle L. & A. Co.*, 64 Mont. 154, 168, 208 Pac. 1075; as section 5031, Revised Codes, in *State Bank of Darby v. Pew et al.*, 59 Mont. 144, 151, 195 Pac. 852.

For text treatment of this subject see vol. 6 Cal. Jur. 299.

7534. Interpretation in favor of contract.

A telegram, "Wire lowest price you will sell the 7000 S. & W. yearling ewes" and an answering telegram, "Lowest price on S. & W. yearling ewes eleven fifty this subject to immediate acceptance," held together with custom and usage and in view of sections 7534, 7537 and 7538, Revised Codes of 1921, to evidence a complete contract for the sale of the sheep, where defendant's offer was accepted within twenty-four hours, as against the objection that there was no meeting of the minds of the parties upon the price that price could only be determined on delivery and that the offer was not accepted immediately. *Story v. Stanfield*, 275 Fed. 401.

Cited in *Capital F. Corp. v. Metropolitan*

L. I. Co., 75 Mont. 460, 465, 243 Pac. 1061; *Union Central Life Ins. Co. v. Jensen*, 74 Mont. 70, 76, 237 Pac. 518; *Kasun v. Todevich*, 71 Mont. 315, 319, 229 Pac. 714; *Wandell v. Johnson*, 71 Mont. 73, 77, 227 Pac. 58; *Linse v. Zastrow*, 63 Mont. 241, 207 Pac. 119; *Schauer v. Morgan et al.*, 67 Mont. 455, 467, 216 Pac. 347; *Hinerman v. Baldwin et al.*, 67 Mont. 417, 433, 215 Pac. 1103; *McDonald et al. v. McNich et al.*, 63 Mont. 308, 313, 206 Pac. 1096; as section 5032, Revised Codes, in *State Bank of Darby v. Pew et al.*, 59 Mont. 144, 155, 195 Pac. 852.

For text treatment of this subject see vol. 6 Cal. Jur. 269.

7535. Words to be understood in usual sense.

Cited in *Solberg v. Sunburst Oil & Gas Co.*, 73 Mont. 94, 102, 235 Pac. 761; *Ket-*

tlekamp et al. v. Watkins et al., 70 Mont. 391, 397, 225 Pac. 1003.

7537. Law of place.

A lease was not void for failing to designate the time and place for a division of the crops provided for, since under this section, any uncertainty in that respect was determinable by the custom or usage observed in the vicinity in the light of the surrounding facts and circumstances bearing upon the transaction (section 7538). *McDonald et al. v. McNich et al.*, 63 Mont. 308, 206 Pac. 1096.

Cited in *Capital F. Corp. v. Metropolitan L. I. Co.*, 75 Mont. 460, 464, 243 Pac. 1061.

Applied with sections 7534 and 7538 in *Story v. Stanfield*, 275 Fed. 401.

Custom or previous dealing as imposing an obligation upon party to contract to accept something else in lieu of cash, note, 8 A. L. R. 268.

For text treatment of this subject see vol. 5 Cal. Jur. 456; vol. 6 Cal. Jur. 312.

7538. Contracts explained by circumstances.

Cited in *Anderson v. Border et al.*, 75 Mont. 516, 529, 244 Pac. 494; *United States Nat. Bank v. Chappell*, 71 Mont. 553, 566, 230 Pac. 1084; *Berne v. Stevens*, 67 Mont. 254, 259, 215 Pac. 803; *Emerson-Brantingham I. Co. v. Raugstad*, 65 Mont. 297, 304, 211 Pac. 305; *McDonald et al. v.*

McNich et al., 63 Mont. 308, 206 Pac. 1096; as section 5036, Revised Codes, in *State Bank of Darby v. Pew et al.*, 59 Mont. 144, 155, 195 Pac. 852.

Applied with sections 7534 and 7537 in *Story v. Stanfield*, 275 Fed. 401.

7539. Contract restricted to its evident object.

Cited in *Solberg v. Sunburst Oil & Gas Co.*, 73 Mont. 94, 102, 235 Pac. 761; *Emerson-Brantingham I. Co. v. Raugstad*, 65 Mont. 297, 304, 211 Pac. 305; as section 5037, Revised Codes,

in *Comeford v. U. S. F. & G. Co.*, 59 Mont. 243, 259, 196 Pac. 984; *State Bank of Darby v. Pew et al.*, 59 Mont. 144, 156, 195 Pac. 852.

7540. Interpretation in sense in which promisor believed promisee to rely.

Cited in *Schauer v. Morgan et al.*, 67 Mont. 455, 467, 216 Pac. 347.

7541. Particular clauses subordinate to general intent.

Cited in *Hinerman v. Baldwin et al.*, 67 Mont. 417, 433, 215 Pac. 1103.

7542. Contract—Partly written and partly printed.

Under this section the written portion of a contract controls that which is printed. *Daley et al. v. Torrey*, 69 Mont. 599, 223 Pac. 498.

For text treatment of this subject see vol. 6 Cal. Jur. 283.

7543. Repugnancies—How reconciled.

Cited in *Cook-Reynolds Co. v. Wilson*, 67 Mont. 147, 154, 214 Pac. 1104.

7544. Inconsistent words rejected.

Under this section, where a word appears in a contract which is meaningless in the connection in which it is employed, it must be disregarded in the interpreta-

tion of the writing. *Kasun v. Todevich*, 71 Mont. 315, 229 Pac. 714.

For text treatment of this subject see vol. 6 Cal. Jur. 285.

7545. Words to be taken most strongly against whom.

An oil and gas lease should be construed strictly against the lessee and in favor of the lessor. *Daley et al. v. Torrey*, 69 Mont. 599, 223 Pac. 498; *Thomas v. Standard Development Co.*, 70 Mont. 156, 224 Pac. 870.

Cited in *State ex rel. Nauman v. Pondera Valley State Bank*, 77 Mont. 1, 6,

248 Pac. 207; *Kasun v. Todevich*, 71 Mont. 315, 318, 229 Pac. 714; *McDonald et al. v. McNish et al.*, 63 Mont. 308, 315, 206 Pac. 1096; *Weir v. Ryan*, 68 Mont. 336, 339, 218 Pac. 947.

For text treatment of this subject see vol. 6 Cal. Jur. 307.

7547. Necessary incidents implied.

Where a deed to a tract of farm land expressly conveyed a water right sufficient in amount to irrigate the acreage sold, all other rights theretofore used in connection with the land were impliedly excluded and did not pass under the general appurtenance clause in the deed. *Lensing v. Day & Hansen Security Co.*, 67 Mont. 382, 215 Pac. 999.

A lease of agricultural lands which did not impose upon either party the work of preparing them for crops or provide

who should furnish seed, bear the expense of harvesting, extra help, etc., was not void for uncertainty, it being implied under this section, from the fact that the lessees were to have possession for the purpose of producing crops, that they were to do these things. *McDonald et al. v. McNish et al.*, 63 Mont. 308, 206 Pac. 1096.

For text treatment of this subject see vol. 6 Cal. Jur. 311.

7548. Time of performance of contract.

Where one buys personal property at a stipulated price and no time of payment is agreed upon, the law fixes the time of delivery as the time of payment, and the rule declared by this section, that if no time is specified for the performance of an act, a reasonable time for performance is allowed, has no application. *Burden v. Elling State Bank*, 76 Mont. 24, 46 A. L. R. 906, 245 Pac. 958.

Failure of a contract for the development of mining claims to provide a specified time within which defendants should begin operations and prosecute the work of development to completion is alone insufficient to void the contract, since under this section they were allowed a reasonable time within which to do the acts required. *Lee v. Lee Gold Mining Co. et al.*, 71 Mont. 592, 230 Pac. 1091.

Cited in *Burden v. Elling State Bank*, 76 Mont. 24, 36, 46 A. L. R. 906, 245 Pac. 958.

Time for performance of contract for co-operative marketing of farm products, notes, 33 A. L. R. 254; 47 A. L. R. 946.

Rights of parties to a timber contract upon failure of purchaser to remove the timber within the time fixed or within a reasonable time, note, 15 A. L. R. 41.

Time for performance of contract for sale or exchange of land where time fixed by contract has been waived, note, 4 A. L. R. 815.

Duration of real estate broker's contract which specifies no time, note, 24 A. L. R. 1537.

For text treatment of this subject see vol. 6 Cal. Jur. 346; vol. 20 Cal. Jur. 899.

7549. Time—When of essence.

Cited in *Burden v. Elling State Bank*, 76 Mont. 24, 36, 46 A. L. R. 906, 245 Pac. 958; *Krause v. Insurance Co. of*

North America, 73 Mont. 169, 176, 235 Pac. 406; *Thomas v. Standard Development Co.*, 70 Mont. 156, 173, 224 Pac. 870.

CHAPTER 13.

UNLAWFUL CONTRACTS.

7553. What is unlawful.

Cited in *Portland Cattle Loan Co. v. Featherly*, 74 Mont. 531, 547, 241 Pac. 322; *Biering et al. v. Ringling*, 74 Mont. 176, 196, 240 Pac. 829; *Baltimore Pro-*

cess Co. v. Red Lodge Brewing Co., 66 Mont. 407, 409, 213 Pac. 798; *Fitzgerald v. Eisenhauer*, 62 Mont. 582, 592, 206 Pac. 685.

7554. Certain contracts unlawful.

Cited in *Fergus County v. Federal Reserve Bank*, 75 Mont. 582, 592, 244 Pac. 883.

7556. Employers protected from negligence.

A grazing lease, providing for the grazing of an average of 9,000 head of cattle and that any excess over 11,500 head should be paid for at the rate of \$4.50 per head in addition to the rental specified, was held not invalid as providing a penalty or liquidated damages in violation of sections 7556, 7557, such provision being merely a stipulated sum to be paid for a specific privilege, namely to graze cattle in excess of 9,000 and up to the limit of 11,500 and such grazing did not constitute a breach of the contract. *Kirby v. United States*, 273 Fed. 391.

Validity and effect of anticipatory provision in contract in relation to rate of interest in the event of default, note, 12 A. L. R. 367.

Absence of actual damages as affecting right to amount stipulated in contract for breach, note, 34 A. L. R. 1336.

Provision in contract for liquidated damages or penalty as affecting enforcement of restrictive covenants in contracts of employment, notes, 9 A. L. R. 1481; 20 A. L. R. 870.

For text treatment of this subject see vol. 6 Cal. Jur. 95; vol. 8 Cal. Jur. 851.

7557. Exception.

Applied with section 7556 in *Kirby v. United States*, 273 Fed. 391.

7562. Contract in restraint of marriage void.

A contract in restraint of marriage of any person other than a minor is void under this section. *Security State Bank v. McIntyre*, 71 Mont. 186, 228 Pac. 618.

For text treatment of this subject see vol. 16 Cal. Jur. 910.

CHAPTER 14.

EXTINCTION OF CONTRACTS—RESCISSION—ALTERATION—CANCELLATION.

7563. Contracts—How extinguished.

Cited in *Edwards et al. v. Muri*, 73 Mont. 339, 346, 237 Pac. 209.

7564. Rescission extinguishes contract.

Cited in *Hollingsworth v. Ruckman*, 72 Mont. 147, 156, 232 Pac. 180.

7565. When party may rescind.

A buyer cannot rescind a sale of personal property on the ground of failure of consideration until he has been dis-

turbed in his possession or otherwise suffered damages. *Courtney v. Gordon*, 74 Mont. 408, 241 Pac. 233.

The purchaser under an executory land contract is not entitled to rescind on the ground of failure of title in the vendor so long as the latter is not in default. *Wilson v. Corcoran et al.*, 73 Mont. 529, 237 Pac. 521.

Facts examined and held not to constitute grounds for rescission of a contract for misrepresentation in *Edwards et al. v. Muri*, 73 Mont. 339, 237 Pac. 209.

Where holders of contracts executed by an irrigation company had surrendered them for stock in a mutual irrigation company, its successor, with knowledge that each share of stock did not represent a fixed or certain number of inches of water, that in dry seasons the available water was prorated, etc., they were not entitled years afterward to rescind the contract of exchange on the ground of fraudulent representations; their failure to take prompt action to rescind and to restore the status quo barring their right to maintain the action. *Dyk et al. v. Buell Land Co. et al.*, 70 Mont. 557, 227 Pac. 71.

The parties to an executory contract of sale of real property may terminate it by mutual consent independently of any provisions in the contract permitting them to do so. *Ogg v. Herman et al.*, 71 Mont. 10, 227 Pac. 476.

Neither the remedy afforded by this section giving a party to a contract the right to rescind on the ground of fraud, among others, nor that granted by section 8726, under which he may have the contract reformed on the same ground, is exclusive, each being independent of the other; hence the defrauded party may elect to pursue either remedy. *Campana v. Dobry*, 69 Mont. 240, 221 Pac. 540.

Subdivision 4 of this section, authorizing rescission if consideration for the

contract fails in a material respect from any cause, applies only to executory, not executed, contracts, i. e., where there has been a change in the situation causing the consideration to fail between the time of its making and its execution. *Simeon v. Klenze*, 66 Mont. 341, 213 Pac. 440.

The buyer of a promissory note secured by mortgages on real and personal property, subject to prior liens which were foreclosed by their holders, rendering the security valueless, but through no fault of the seller of the note, had no cause of action for rescission (no fraud or deceit having been practiced upon him) under any of the provisions of this section. *Simeon v. Klenze*, 66 Mont. 341, 213 Pac. 440.

If false representations were held out to plaintiff as an inducement for the execution of notes in payment of a subscription for corporate stock, upon which it acted, the obligation became a nullity and the subscriber may rescind. *Equity Co-operative Assn. v. Milling Co.*, 63 Mont. 26, 206 Pac. 349.

Cited in *Fleming v. Consolidated M. S. Co.*, 74 Mont. 245, 261, 240 Pac. 376; *Wilson v. Corcoran et al.*, 73 Mont. 529, 532, 237 Pac. 521; *Edwards et al. v. Muri*, 73 Mont. 339, 347, 237 Pac. 209; *Ogg v. Herman et al.*, 71 Mont. 10, 20, 227 Pac. 476; *Bump et al. v. Geddes*, 70 Mont. 425, 431, 226 Pac. 512.

Rescission of contract by intoxicated person where other party knowingly took advantage of him, note, 36 A. L. R. 629.

Mistake in lease as ground for relief, note, 26 A. L. R. 475.

Mistake as to one's interest in land under law of descent, note, 39 A. L. R. 194.

For text treatment of this subject see vol. 4 Cal. Jur. 770; vol. 6 Cal. Jur. 389.

7567. Rescission—How effected.

The requirement of this section that before a party can rescind a contract he must restore, or offer to restore, to the other party everything of value received under it, were sufficiently met by an allegation in a taxpayer's complaint that articles purchased under a fraudulent contract by defendant school trustees were in the school building and could be restored to the seller by the court's decree, the rule being that where restoration has been rendered impossible through no fault of plaintiff he may have relief, particularly if the court by its decree is able to bring about restoration. *School Dist. No. 2 v. Richards et al.*, 62 Mont. 141, 205 Pac. 206.

By continuing in possession of ranch

property for more than five months after commencement of suit to rescind, the vendee waived his right of rescission under this section, making it incumbent upon a party desiring to rescind to tender back possession and to keep the tender good by removal from the premises. *Fontaine v. Lyng et al.*, 61 Mont. 590, 202 Pac. 1112.

In an action for the cancellation of notes given for the purchase of farm machinery, absence of allegation and proof that plaintiff had restored everything of value he had received from defendants bars him from recovery. *Rowe v. Emerson-Brantingham Co.*, 61 Mont. 73, 201 Pac. 316.

Under this section one desiring to re-

rescind a contract must act promptly upon discovery of the facts which entitle him to rescind and he is aware of his right to rescind, and restore or offer to restore, to the other party everything of value which he has received from him under the contract. *Smith v. Christie et al.*, 60 Mont. 604, 201 Pac. 1011.

Cited in *St. Onge et al. v. Blakely et al.*, 76 Mont. 1, 13, 245 Pac. 532; *Edwards et al. v. Muri*, 73 Mont. 339, 347,

237 Pac. 209; *Dyk et al. v. Buell Land Co. et al.*, 70 Mont. 557, 567, 227 Pac. 71.

Necessity of promptness in seeking rescission of contract negotiated by agent acting for both parties, note, 48 A. L. R. 928.

Promptness as condition of right to rescind purchase at auction because of puffing, note, 46 A. L. R. 131.

For text treatment of this subject see vol. 4 Cal. Jur. 763; vol. 6 Cal. Jur. 385.

7569. Written contracts—How modified.

Where plaintiff in an action on a written contract relies upon an alteration thereof by a subsequent executed oral agreement, he must plead it; in the absence of such a pleading testimony of the alteration is inadmissible. *Hunt et al. v. S. Y. Cattle Co.*, 75 Mont. 594, 244 Pac. 480.

Parol testimony of an oral unexecuted agreement by the tenant holding under a written lease that he would surrender the lease and vacate the premises as soon as the landlord could procure a new tenant was inadmissible under this section. *Quong et al. v. McEvoy et al.*, 70 Mont. 99, 224 Pac. 266.

Since under this section a written agreement may be modified by an executed oral one, where parties had executed a portion of their engagement and then committed the remainder to writing, parol

evidence of the part which had been executed was admissible. *Webber v. Killorn et al.*, 66 Mont. 130, 212 Pac. 852.

Under this section a written contract is subject to alteration or modification by a subsequent agreement in writing or by an executed oral agreement. *Hurley v. Great Falls Baseball Assn.*, 59 Mont. 21, 195 Pac. 559.

Cited in *Humble v. St. John et al.*, 72 Mont. 519, 526, 234 Pac. 475; *Cobb v. Warren*, 64 Mont. 10, 18, 208 Pac. 928.

Effect of the statute of frauds upon the right to modify, by subsequent parol agreement, a written contract required by the statute to be in writing, notes, 17 A. L. R. 10; 29 A. L. R. 1095.

For text treatment of this subject see vol. 6 Cal. Jur. 373.

CHAPTER 15.

OBLIGATIONS IMPOSED BY LAW.

7573. Abstinence from injury.

Cited in *Burden v. Elling State Bank*, 76 Mont. 24, 30, 46 A. L. R. 906, 245 Pac. 958; sections 7573, 7574, 7575 were cited

in *McIntyre et al. v. Dawes*, 71 Mont. 367, 373, 229 Pac. 846; *Simonsen v. Barth et al.*, 64 Mont. 95, 100, 208 Pac. 938.

7574. Fraudulent deceit.

Under this section acquisition of another's property by deceit is illegal, and all acts done in furtherance of a purpose to so acquire it become tainted with the illegality, although if performed without the unlawful purpose in view, they might of themselves be innocent. *Biering et al. v. Ringling*, 74 Mont. 176, 240 Pac. 829.

While the mere making of a promise which the promisor fails or refuses to perform does not ordinarily constitute actionable fraud, where, by reason of the promise made with an intention not to perform it but to deceive the promisee and induce him to act where he would not have acted, and he acts, so changing his position that it is impossible to place

him in statu quo, an action for fraud lies. *McIntyre et al. v. Dawes*, 71 Mont. 367, 229 Pac. 846.

Cited in *Bump et al. v. Geddes*, 70 Mont. 425, 431, 226 Pac. 512.

Relief as regards outstanding money obligation in action for damages for fraud in inducing contract, note, 3 A. L. R. 74.

Liability for misrepresenting age of child to one who, having employed a child below employable age, has incurred liability for injury to him, note, 1 A. L. R. 302.

For text treatment of this subject see vol. 12 Cal. Jur. 841.

7575. Deceit—Acts constituting.

Cited in Biering et al. v. Ringling, 74 Mont. 176, 196, 240 Pac. 829; Bump et al. v. Geddes, 70 Mont. 425, 431, 226

Pac. 512; Equity Co-operative Assn. v. Milling Co., 63 Mont. 26, 36, 206 Pac. 349.

7577. Restoration of thing wrongfully acquired.

Sections 7577, 7578 were cited in Stiemke v. Jankovich et al., 68 Mont. 60, 62, 217 Pac. 650.

7579. Responsibility for wilful acts, negligence, etc.

Cited in State ex rel. Case v. Bolles et al., 74 Mont. 54, 66, 238 Pac. 586; Simon-

sen v. Barth et al., 64 Mont. 95, 100, 208 Pac. 938.

CHAPTER 16.**FORM OF CONTRACT—FILING OF CONDITIONAL SALES CONTRACT.****7581. Sale defined.**

A sale as distinguished from an agreement to sell is the actual transfer of title from the grantor to the grantee, an agreement to sell being a contract to be performed in the future, which, if fulfilled, results in a sale. Franzke v. Fergus County et al., 76 Mont. 150, 245 Pac. 962.

Cited in State v. Redmond, 73 Mont. 376, 381, 237 Pac. 486; Apple v. Henry, 66 Mont. 244, 248, 213 Pac. 444; Butte Floral Co. v. Reed, 65 Mont. 138, 152, 211 Pac. 325.

This and the following section were cited as sections 5079, 5080, Revised

Codes, in Ferry & Co. v. Forquer, 61 Mont. 336, 342, 29 A. L. R. 642, 202 Pac. 193.

What amounts to a conditional sale, note, 17 A. L. R. 1421.

Assignment of a part of the amount due or to fall due upon a money obligation as a sale or loan for purposes of usury law, note, 24 A. L. R. 858.

Contract for co-operative marketing of farm products as agency or sale, notes, 33 A. L. R. 253; 47 A. L. R. 946.

For text treatment of this subject see vol. 22 Cal. Jur. 903.

7582. Subject of sale.

Cited in Franzke v. Fergus County et al., 76 Mont. 150, 153, 245 Pac. 962.

7584. Agreement to sell.

Cited in Franzke v. Fergus County et al., 76 Mont. 150, 153, 245 Pac. 962; as section 5082, Revised Codes, in Wing

et al. v. Brasher, 59 Mont. 10, 20, 194 Pac. 1106.

7585. Agreement to buy.

Cited in Hennessy Co. v. Wagner et al., 69 Mont. 46, 48, 220 Pac. 101; as section 5083, Revised Codes, in Wing et

al. v. Brasher, 59 Mont. 10, 20, 194 Pac. 1106.

7586. Agreement to sell and buy.

Cited as section 5084, Revised Codes, in State v. Wallin, 60 Mont. 332, 339, 199 Pac. 285.

7588. Agreement to sell real property.

Cited in Esselstyn v. Meyer & Chapman State Bank, 63 Mont. 461, 463, 208 Pac. 910.

7589. Usual common-law covenants required by such contracts, when.

Cited in Green v. Baker, 66 Mont. 568, 575, 214 Pac. 88.

7590. Form of such covenants.

Where a warranty deed to real property purports to convey the realty itself and not merely the grantor's right, title and interest in it, the covenant of warranty that "the grantor hereby covenants that he will forever warrant and defend" the grantee's "right, title and interest in and to the said premises . . .

against all and every person" etc., is one of general warranty and quiet enjoyment. *Green v. Baker*, 66 Mont. 568, 214 Pac. 88.

For text treatment of this subject see vol. 7 Cal. Jur. 751.

CHAPTER 17.**FORM OF CONTRACT—FILING OF CONDITIONAL SALES CONTRACTS.****7591. Contract for sale of personal property.**

In order to take an oral contract for the sale of personal property out of the statute of frauds, the note or memorandum thereof referred to in this section must be so drawn that the essentials of the contract may be ascertained without resort to oral evidence, the rule being complied with if the material elements of the contract are stated in general terms. *Lewis v. Aronow*, 77 Mont. 348, 251 Pac. 146.

In an action for breach of contract of sale of cattle where defendant company was sought to be held liable under an arrangement made over the telephone by a third person who had never been its agent and was not specifically authorized by it to act for it, and who after completion of the conversation assured the buyer that defendant would take the cattle and thereupon paid a part of the

purchase price, defendant never making any payment whatever, held that the payment was not made by the buyer and therefore the case was not taken out of the statute of frauds by such part payment. *Mahoney Brothers v. Hansen Packing Co.*, 67 Mont. 120, 215 Pac. 506.

Discharge of existing debt (or crediting indebtedness) as part payment which will take contract out of statute of frauds, note, 23 A. L. R. 473.

When goods remaining in custody of seller or some third person deemed to have been received by buyer, within exception to statute of frauds, note, 4 A. L. R. 902.

For text treatment of this subject see vol. 12 Cal. Jur. 875.

7593. Contract for sale of real property.

Cited in *Hogan v. Thrasher*, 72 Mont. 318, 327, 233 Pac. 607.

Cited in *Dreidlein v. Manger*, 69 Mont. 155, 163, 220 Pac. 1107.

7594. Filing contracts for sale of personal property. All contracts, notes, and instruments for the transfer or sale of personal property, where the title stipulated to remain in the vendor until the payment of the purchase price, or some part thereof, shall be in writing, and the original or true copy thereof, certified by the county clerk and recorder, shall be filed with the county clerk and recorder of the county wherein said personal property was situated at the time of the execution of said contract, note or other instrument for the transfer or sale of said personal property, if the vendee resides without said county, the original or a certified copy thereof shall be filed in the county where the vendee resides, otherwise, any such contract, note, or instrument is void as to bona fide purchasers, mortgagees, or attaching creditors of such property prior to such filing.

And. Sec. 1, Ch. 145, L. 1925.

A conditional sale contract (subject, an automobile) must, under this section, be filed in the county where the property was at the time of the execution of the contract, and not in an adjoining county to which

it was immediately removed, the home of the conditional vendee where it was kept and used. (Mr. Justice Holloway dissenting.) *Fergus Motor Co. v. Sorenson*, 73 Mont. 122, 235 Pac. 422.

A certified copy of a conditional sale

contract filed with a county clerk, the original of which was not acknowledged or proved and certified, was inadmissible for the purpose of showing, in an action for conversion of the property, that one other than plaintiff was its owner. *Angell v. Lewistown State Bank et al.*, 72 Mont. 345, 232 Pac. 90.

A contract for the sale of an article wherein it was stipulated that title should remain in the vendor until the purchase price was paid, construed as a conditional sale contract under this section, and held not susceptible of construction as one of bailment. *Hodson et al. v. O'Keeffe*, 71 Mont. 322, 229 Pac. 722.

Where personalty had been levied upon before a conditional sale contract covering it was filed in the office of the county clerk and recorder, it was impressed with

the lien which continued in full force and effect until judgment, nothing in the meantime transpiring to destroy it, rendering the contract void as to the attaching creditor, under this section. *Billings Hardware Co. v. Bryan*, 63 Mont. 14, 206 Pac. 418.

Cited in *Doering v. Selby et al.*, 75 Mont. 416, 420, 244 Pac. 485; *Hennessy Co. v. Wagner et al.*, 69 Mont. 46, 48, 220 Pac. 101; as section 5092, Revised Codes, in *Hoeller v. Moog et al.*, 60 Mont. 74, 80, 198 Pac. 367.

Purchaser from party to recorded conditional sale contract as affected by actual or apparent authority to sell property, note, 47 A. L. R. 92.

For text treatment of this subject see vol. 22 Cal. Jur. 1095, 1122.

7597. Default of Vendee—Seizure and sale of property—Application of proceeds.

A provision in a promissory note (treated as a conditional sale contract) that upon breach by the maker the payee might treat the sale of the chattels (automobiles) as absolute, retake and sell them, applying the net proceeds upon the note, and if such proceeds were insufficient to discharge the debt, the maker to pay the deficiency, may properly be enforced under this section and does not contravene public policy. *First Nat. Bank of Missoula v. Marlowe et al.*, 71 Mont. 461, 230 Pac. 374.

Effect of provision in contract with reservation of title for collection of unpaid purchase money after retaking the property, note, 25 A. L. R. 1490.

Taking possession of property conditionally sold as affecting action previously commenced for purchase price, note, 23 A. L. R. 1462.

Breaking and entering for purpose of retaking possession upon default of the purchaser, note, 36 A. L. R. 853.

For text treatment of this subject see vol. 22 Cal. Jur. 1102.

CHAPTER 18.

RIGHTS AND OBLIGATIONS OF THE SELLER—DELIVERY AND WARRANTY.

7599. When a seller may resell.

This section, providing that the vendor on breach of a conditional sale contract by the vendee may rescind the contract, or enforce his lien for the purchase price, applies only where the possession of the property is retained throughout by the vendor, hence has no application where possession was immediately delivered to the vendee. *First Nat. Bank of Missoula*

v. Marlowe et al., 71 Mont. 461, 230 Pac. 374.

Seller's right to recover, from purchaser, expenses of caring for personal property prior to its resale upon failure of sale contract, note, 29 A. L. R. 61.

For text treatment of this subject see vol. 22 Cal. Jur. 1051, 1063.

7600. Delivery on demand.

Cited as section 5097, Revised Codes, in *Gallatin County F. Alliance v.*

Flannery, 59 Mont. 534, 538, 197 Pac. 996.

7606. Warranty defined.

Cited in *Butte Floral Co. v. Reed*, 65 Mont. 138, 152, 211 Pac. 325.

7608. Warranty of title to personal property.

Cited in *Courtney v. Gordon*, 74 Mont. 408, 415, 241 Pac. 233; as section 5105,

Revised Codes, in *Heffron v. Thomas et al.*, 61 Mont. 10, 13, 201 Pac. 572.

7610. When seller knows that buyer relies on his statements, etc.

Cited in *Butte Floral Co. v. Reed*, 65 Mont. 138, 152, 211 Pac. 325.

7612. Manufacturer's warranty against latent defects.

This and the two following sections Codes, in *Rowe v. Emerson-Brantingham Co.*, 61 Mont. 73, 76, 201 Pac. 316.
were cited as sections 5109-5111, Revised

7617. Warranty on sale of written instrument.

Cited in *Newer v. First Nat. Bank of Harlem*, 74 Mont. 549, 556, 241 Pac. 613.

CHAPTER 19.

RIGHTS AND OBLIGATIONS OF BUYER—PAYMENT AND INSPECTION.

7624. Rights in case of breach of warranty.

Cited in *Rickards v. Aultman & Taylor M. Co.*, 64 Mont. 394, 399, 210 Pac. 82.

CHAPTER 21.

EXCHANGE.

7632. Exchange defined.

Cited in *Apple v. Henry*, 66 Mont. 244, 248, 213 Pac. 444.

CHAPTER 23.

DEPOSIT FOR KEEPING—GRATUITOUS DEPOSIT.

7656. Gratuitous deposit defined.

Cited in *Gates v. Powell*, 77 Mont. 554, 560, 252 Pac. 377.

CHAPTER 24.

DEPOSIT FOR KEEPING—STORAGE—STORAGE OF UNCLAIMED PROPERTY BY CARRIERS.

7660. Deposit for hire.

Where a railway company accepts baggage from a traveler for safekeeping in its parcel-room, the transaction constitutes a bailment, the company acting as a bailee and not as a common carrier. *Jones et al. v. Great Northern Ry. Co.*, 68 Mont. 231, 37 A. L. R. 754, 217 Pac. 673.

Sections 7660-7672 were cited in *Jones et al. v. Great Northern Ry. Co.*, 68 Mont. 231, 235, 37 A. L. R. 754, 217 Pac. 673.

For text treatment of this subject see vol. 4 Cal. Jur. 6, 25.

CHAPTER 25.

DEPOSIT FOR KEEPING—INNKEEPERS.

7684. Defrauding inn and hotel keepers, etc.—Penalty.

Cited in *Saner v. Bowker*, 69 Mont. 463, 467, 222 Pac. 1056.

CHAPTER 27.

DEPOSIT FOR EXCHANGE.

7701. Relations of the parties.

Cited in *Jensen v. Laurel Meat Co.*, 71 Mont. 582, 590, 230 Pac. 1081.

CHAPTER 28.

LOAN FOR USE—LOAN FOR EXCHANGE—LOAN OF MONEY.

7702. Loan defined.

Where under a separation agreement the wife accepted certain real property in full satisfaction of her rights in the property of the husband, and the latter granted her permission to use household furniture owned by him until he should want it, the transaction constituted a bailment for the benefit of the wife for an indefinite period—a loan within the

meaning of this section. *Viers v. Webb*, 76 Mont. 38, 245 Pac. 257.

This and the following section were cited as sections 5188, 5189, Revised Codes, in *Ferry & Co. v. Forquer*, 61 Mont. 336, 342, 29 A. L. R. 642, 202 Pac. 193.

For text treatment of this subject see vol. 4 Cal. Jur. 9.

7725. Legal interest.

A promissory note payable with interest without, however, specifying the rate thereof, carries interest at the legal rate. *Burnett v. Burnett*, 68 Mont. 546, 219 Pac. 831.

Cited in *State v. Banking Corp. of*

Montana, 74 Mont. 491, 508, 241 Pac. 626; In re *Rodgers' Estate*, 68 Mont. 46, 53, 217 Pac. 678.

For text treatment of this subject see vol. 14 Cal. Jur. 680.

CHAPTER 29.

HIRING IN GENERAL.

7734. Must repair injuries, etc.

Cited in *Quong et al. v. McEvoy et al.*, 70 Mont. 99, 105, 224 Pac. 266; *Noe v. Cameron*, 62 Mont. 527, 532, 205 Pac. 256.

7738. When hiring terminates.

Cited in *Stiemke v. Jankovich et al.*, 68 Mont. 60, 62, 217 Pac. 650.

CHAPTER 30.

HIRING OF REAL PROPERTY—OF PERSONAL PROPERTY.

7741. Lessor to make dwelling-house fit for its purpose.

Cited in *Quong et al. v. McEvoy et al.*, 70 Mont. 99, 104, 224 Pac. 266; *Noe v. Cameron*, 62 Mont. 527, 532, 205 Pac. 256.

7742. When lessee may make repairs, etc.

Where a landlord, after notice of dilapidations in a hotel building in need of repair, failed to repair, the tenant under this section, had the option of making the repairs himself at a cost not to exceed one month's rent and deduct the expense from the rent, or vacate the premises without further liability for rent, but had no cause of action for damages for injury to his personal property and for loss of profits. *Noe v. Cameron*, 62 Mont. 527, 205 Pac. 256.

Cited in *Noe v. Matlock et al.*, 64 Mont. 35, 39, 208 Pac. 591.

Rights and remedies of tenant upon landlord's breach of covenant to repair, note, 28 A. L. R. 1448.

Rights and remedies of tenant who remains in possession of all or part of the premises, against landlord, for failure to repair, notes, 20 A. L. R. 1409; 28 A. L. R. 1336.

Breach of lessor's covenant to repair as ground of liability for damages for personal injuries to tenant, or one in privity with latter, note, 8 A. L. R. 765.

For text treatment of this subject see vol. 15 Cal. Jur. 691.

7745. Renewal of lease by lessee's continued possession.

Where a tenant, after the expiration of his lease, held over at the invitation of the owner, paying rental to the latter, a tenancy from year to year was created, which, upon proper notice, was terminable at the pleasure of the purchaser of the property. *Stoltze Land Co. v. Westberg*, 63 Mont. 38, 206 Pac. 407.

General provision in lease for continuance or renewal as applicable after new or extended term, note, 14 A. L. R. 948.

What amounts to an option to renew or extend a lease, note, 26 A. L. R. 1413.

What constitutes sufficient notice of exercise of option of renewal in lease, note, 1 A. L. R. 343.

Effect of lessee's failure or delay in giving notice within specified time, note, 27 A. L. R. 981.

Time for notice of renewal where date falls on Sunday, note, 29 A. L. R. 241.

Notice of intent to renew after close of period as satisfying requirement that it be given at end of period, note, 45 A. L. R. 726.

Construction of provision in lease giv-

ing privilege of "releasing," note, 38 A. L. R. 1255.

Re-entry by lessor as terminating option to renew, note, 29 A. L. R. 1040.

When covenant to renew lease construed to be for perpetual renewal, note, 39 A. L. R. 279.

Constitutionality of statute permitting holding over by tenant after expiration of lease, notes, 11 A. L. R. 1252; 16 A. L. R. 178.

Cotenant's liability for rent where he holds over after expiration of lease, note, 27 A. L. R. 260.

Right to notice to quit of tenant holding over after termination of definite term, note, 19 A. L. R. 1405.

Subtenant's holding over as affecting rights of lessee who relets for entire term as to recovery of rent as against sublessee or person claiming under him, note, 32 A. L. R. 1448.

Transfer or devolution of reversion as carrying lessee's covenants to repair or yield up in repair where tenant holds over, note, 34 A. L. R. 806.

For text treatment of this subject see vol. 15 Cal. Jur. 820.

7754. Return of the thing hired.

Cited in *Stiemke v. Jankovich et al.*, 68 Mont. 60, 62, 217 Pac. 650.

CHAPTER 31.**OBLIGATIONS OF EMPLOYER.****7758. When not.**

Cited in *Miller v. Granite County Power Co. et al.*, 66 Mont. 368, 383, 213 Pac. 604; *Grant v. Nihill*, 64 Mont. 420, 437, 210 Pac. 914.

CHAPTER 32.**OBLIGATIONS OF THE EMPLOYEE.****7768. Duties of gratuitous employee.**

Cited in *Liston v. Reynolds*, 69 Mont. 480, 497, 223 Pac. 507.

CHAPTER 33.**TERMINATION OF EMPLOYMENT.****7789. Termination at will.**

Cited in *Wirta v. North Butte Mining Co. et al.*, 64 Mont. 279, 290, 30 A. L. R. 964, 210 Pac. 332.

7791. Termination by employee for fault.

Cited in *Wirta v. North Butte Mining Co. et al.*, 64 Mont. 279, 290, 30 A. L. R. 964, 210 Pac. 332.

CHAPTER 34.

MASTER AND SERVANT.

7795. Term of hiring.

Where the salary of an extra deputy in the county clerk's office had been fixed at a monthly rate, her employment is presumed to have been from month to month, under this section, terminable at the end of each monthly period, and such employment was therefore of a temporary and not of a permanent character. *Farrell v.*

Yellowstone County, 68 Mont. 313, 218 Pac. 559.

Duration of contract of hiring which specified no term, but fixes compensation at a certain amount per day, week, month or year, note, 11 A. L. R. 469.

For text treatment of this subject see vol. 16 Cal. Jur. 977.

CHAPTER 37.

SERVICE WITHOUT EMPLOYMENT.

7810. Service without employment.

Cited in *Liston v. Reynolds*, 69 Mont. 480, 497, 223 Pac. 507.

CHAPTER 39.

CARRIAGE OF PERSONS—GRATUITOUS—FOR REWARD.

7815. General duties of carrier.

This section imposing upon the carrier the duty to exercise toward a passenger for hire the highest degree of care does not constitute the carrier an insurer of the passenger's safety. *Heck v. Northern Pacific Ry. Co. et al.*, 59 Mont. 106, 196 Pac. 521.

Cited in *Liston v. Reynolds*, 69 Mont. 480, 497, 223 Pac. 507.

Duty and liability of carrier of passengers for hire by automobile, notes, 4 A. L. R. 1499; 31 A. L. R. 1202; 45 A. L. R. 297.

Carrier's duty while train is going through tunnel, note, 9 A. L. R. 96.

Municipality liability for injury to passenger on municipally owned railroad or street railway, note, 31 A. L. R. 1306.

Liability for injury to patron of scenic railway, notes, 29 A. L. R. 32; 38 A. L. R. 360; 44 A. L. R. 208.

Sparks or cinders injuring passenger, note, 11 A. L. R. 1076.

Independent contractor's acts or omissions causing injury to passenger, note, 29 A. L. R. 783, 786.

Injury to passenger while passing through turnstile, door or gate, note, 40 A. L. R. 828.

Mail bag thrown from train by postal clerk, note, 34 A. L. R. 520.

Carrier's liability for injuries from fall of baggage or freight, note, 40 A. L. R. 501.

Liability of carrier for injury caused

by falling over baggage on platform, note, 10 A. L. R. 267.

Passenger temporarily leaving train injured on platform, note, 35 A. L. R. 764, 772.

Liability of carrier for injury to passenger by door of car, notes, 25 A. L. R. 1061; 41 A. L. R. 1089.

Injury to passenger due to construction of floor of car on different levels, note, 48 A. L. R. 1424.

Application of *res ipsa loquitur* doctrine to injury to passenger from defective or dangerous condition of floor of car, note, 7 A. L. R. 1765.

Liability for personal injuries to person in Pullman car, note, 41 A. L. R. 1397.

Effect of overcrowding of car on liability of carrier for assault on passenger by third person, notes, 15 A. L. R. 876; 42 A. L. R. 171.

Street railway company's liability to passenger on account of crowded condition of cars, notes, 5 A. L. R. 1257; 42 A. L. R. 1329.

Liability of carrier for injury due to snow or ice on platform or approach thereto, note, 10 A. L. R. 261.

Injury to passenger by car window, notes, 29 A. L. R. 1262; 45 A. L. R. 1541.

Liability of carrier for injury to passenger by articles belonging to carrier on the floor or in the aisles, notes, 3 A. L. R. 640; 12 A. L. R. 1366.

Liability of carrier for injury to passenger due to obstruction of aisle or

platform by property of another passenger, note, 19 A. L. R. 1372.

Duty of carrier to heat car, note, 33 A. L. R. 168.

Injury by closing or other movement of door of car, due to jolting, note, 41 A. L. R. 1092.

Injury to passenger because of space between station platform and cars, note, 4 A. L. R. 286.

Duty and liability of carrier as to "step box" or other device to facilitate entering and leaving car, note, 20 A. L. R. 914.

Street railway company's liability to passenger struck by vehicle not subject to its control, notes, 1 A. L. R. 953; 12

A. L. R. 1371; 31 A. L. R. 572; 44 A. L. R. 162.

Carrier's liability for injury to passenger due to rushing or crowding of passengers, note, 32 A. L. R. 1315.

Duty of railroad to keep trespassing children from getting on cars, note, 43 A. L. R. 38.

Duty and liability to passenger temporarily leaving train, note, 35 A. L. R. 757.

Responsibility of carrier to its passengers for conditions on roadway or at stations of another carrier over whose line it detours, note, 33 A. L. R. 820.

For text treatment of this subject see vol. 4 Cal. Jur. 931.

CHAPTER 40.

CARRIAGE OF PROPERTY—OBLIGATIONS OF THE CARRIER.

7821. Care and diligence required of carriers.

Cited in *Liston v. Reynolds*, 69 Mont. 480, 497, 223 Pac. 507.

CHAPTER 43.

CARRIAGE OF MESSAGES.

7845. Degree of care and diligence required.

Cited in *Liston v. Reynolds*, 69 Mont. 480, 497, 223 Pac. 507.

CHAPTER 44.

COMMON CARRIERS—IN GENERAL.

7853. Certain agreements void.

Cited in *Liston v. Reynolds*, 69 Mont. 480, 497, 223 Pac. 507.

7854. Effect of written contract.

Cited as section 5340, Revised Codes, in *Cook et al. v. Northern Pacific Ry. Co.*, 61 Mont. 573, 586, 203 Pac. 512.

CHAPTER 46.

COMMON CARRIERS OF PROPERTY.

7868. When exemptions do not apply.

Cited in *Liston v. Reynolds*, 69 Mont. 480, 497, 223 Pac. 507.

7869. Liability for delay.

Cited in *Liston v. Reynolds*, 69 Mont. 480, 497, 223 Pac. 507.

CHAPTER 48.

TRUSTS IN GENERAL—NATURE AND CREATION.

7882. What constitutes one a trustee.

The term "fiduciary or confidential relation" is one founded upon trust or confidence and precludes the idea of profit or advantage resulting from the dealings

of the parties and the person in whom the confidence is reposed. *Kerrigan v. O'Meara*, 71 Mont. 1, 227 Pac. 819.

For text treatment of this subject see vol. 25 Cal. Jur. 123.

7885. How created as to trustee.

In order to bring about a trust relationship so as to bind the trustee, there must have been some act or declaration by the trustee indicating an acceptance of the

trust. *Wood v. Robbins et al.*, 67 Mont. 409, 215 Pac. 1101.

For text treatment of this subject see vol. 25 Cal. Jur. 154.

7886. Involuntary trustee, who is.

Cited in *Kerrigan v. O'Meara*, 71 Mont. 1, 5, 227 Pac. 819.

7887. Involuntary trust resulting from fraud, etc.

While a bankrupt, during the pendency of bankruptcy proceedings against him may settle a suit brought by him, he holds any proceeds so received as trustee for his creditors, and, if the settlement is made with the present intent to misapply the proceeds, for any such misapplication the parties making payment must make reparation, if at the time of

the settlement, they had reasonable grounds for believing that the bankrupt intended such a conversion. *Gunther v. Home Ins. Co. et al.*, 286 Fed. 396.

Cited in *Harrison v. Riddell et al.*, 64 Mont. 466, 478, 210 Pac. 460.

For text treatment of this subject see vol. 25 Cal. Jur. 145.

CHAPTER 49.

TRUSTS IN GENERAL—OBLIGATIONS OF TRUSTEES AND OF THIRD PERSON.

7888. Trustee's obligation to good faith.

By this section and section 7894, it is made the duty of a trustee to act in the utmost good faith to those for whom he acts, and failure of the manager of a syndicate to inform those to whom sales of units were made through the use of the mails, that by contracts made by him, approximately fifty per cent of the proceeds of sales was paid as a commission and expenses to sales agents, was a breach of trust and a fraud upon them. *Campbell v. United States*, 12 Fed. (2d) 873.

Cited in *State ex rel. Rankin v. Banking Corp. of Montana*, 77 Mont. 134, 150, 251 Pac. 151.

Sections 7888, 7889 were cited in *Mayger v. St. Louis Mining etc. Co.*, 68 Mont. 492, 501, 219 Pac. 1102; as section

5374, Revised Codes, in *Crowley et al. v. Rorvig*, 61 Mont. 245, 262, 203 Pac. 496.

Power of testamentary trustee to purchase at his own sale, note, 1 A. L. R. 747.

Attorney's misconduct as trustee as ground for his disbarment or suspension, notes, 9 A. L. R. 193; 43 A. L. R. 108.

Individual liability of trustee for injury to person or property of third person due to negligence, or violation of statute or ordinance, in management of trust estate, notes, 7 A. L. R. 408; 14 A. L. R. 371.

For text treatment of this subject see vol. 25 Cal. Jur. 339.

7889. Trustee not to use property for his own benefit.

Cited in *In re Jennings' Estate*, 74 Mont. 449, 462, 241 Pac. 648; *In re Rodgers' Estate*, 68 Mont. 46, 54, 217 Pac.

678; *In re Eakins' Estate*, 64 Mont. 84, 93, 208 Pac. 956.

7890. Certain transactions forbidden.

Since a trustee cannot take part in any transaction concerning the trust in which he is interested, a contract entered into between a common-law trust at a

meeting of its board of trustees attended by only two of its three members, and a company of which one of the two was the virtual owner, was a nullity, and the

fact that the third member in writing subsequently gave his approval did not render it valid for the reason that under section 6789, the board could act only as a board when assembled as such and not through the individuals composing it. Willard et al. v. Campbell Oil Co. et al., 77 Mont. 30, 248 Pac. 219.

A trustee of a business trust cannot vote as such upon the approval of a claim of his own against the trust; hence where only two of the three trustees con-

stituting the board were present at a meeting when the individual claim of one of the two was presented for allowance and an alleged account stated was agreed upon, the action was void for want of competent representation of the trust. Gordon Campbell Petroleum Co. v. G. Campbell Kevin Syndicate, 75 Mont. 261, 242 Pac. 540.

For text treatment of this subject see vol. 25 Cal. Jur. 134.

7894. Trustee guilty of fraud, when.

Applied with section 7888 in *Campbell v. United States*, 12 Fed. (2d) 873.

7895. Presumption against trustee.

There is no presumption that a director dealing with his corporation does so in bad faith unless he gains an advantage thereby and if the company is indebted to him on a bona fide claim, he may enforce it by the same method open to any other of its creditors. *Mayger v. St. Louis Mining etc. Co.*, 68 Mont. 492, 219 Pac. 1102.

Under this section, where two of three trustees of a common-law trust were officers of an oil company to which the trustees granted an extension of a drilling lease on lands owned by the trust under circumstances showing lack of good

faith, and whose interests were adverse to those of the trust, it will be presumed that the agreement was entered into without consideration and through undue influence. *Willard et al. v. Campbell Oil Co. et al.*, 77 Mont. 30, 248 Pac. 219.

Under this section and sections 5786 and 5792, the law presumes that the delivery by a married woman to her husband of two cashier's checks owned by her, which he cashed, were trusts or loans. *Gilmore v. Gilmore*, 270 Fed. 260.

For text treatment of this subject see vol. 25 Cal. Jur. 127.

7897. Measure of liability for breach of trust.

Cited in *In re Jennings' Estate*, 74 Mont. 449, 462, 241 Pac. 648; *In re Rodgers' Estate*, 68 Mont. 46, 54, 217 Pac. 678;

In re Eakins' Estate, 64 Mont. 84, 93, 208 Pac. 956.

7899. Cotrustees—How far liable for each other.

Cited as section 5385, Revised Codes, in *Crowley et al. v. Rorvig*, 61 Mont. 245, 262, 203 Pac. 496.

7900. Third person—When involuntary trustee.

Where a deposit of trust funds is unlawfully made with the active participation of the bank, it becomes an involuntary trustee under the trust and may be compelled to place the trust estate in statu quo. *Pethybridge v. First State Bank*, 75 Mont. 173, 243 Pac. 569.

Applied with sections 7887 and 7901 in *Gunther v. Home Ins. Co. et al.*, 286 Fed. 396.

For text treatment of this subject see vol. 25 Cal. Jur. 221.

CHAPTER 50.

TRUSTS FOR THE BENEFIT OF THIRD PERSONS—NATURE AND CREATION.

7902. Who are trustees within scope of this chapter.

Cited in *Gordon Campbell Petroleum Co. v. G. Campbell-Kevin Syndicate*, 75 Mont. 261, 270, 242 Pac. 540.

CHAPTER 51.

TRUSTS FOR THE BENEFIT OF THIRD PERSONS—OBLIGATIONS, POWERS
AND RIGHTS OF TRUSTEES.**7914. Trustee's powers as agent.**

The trustees of a business trust constitute a board and can act only as a unit in the disposition of any business of the trust which requires the exercise of judgment or discretion, and not through the individuals composing the

board. *Gordon Campbell Petroleum Co. v. G. Campbell-Kevin Syndicate*, 75 Mont. 261, 242 Pac. 540.

For text treatment of this subject see vol. 25 Cal. Jur. 335.

CHAPTER 53.

DEFINITION OF AGENCY—AUTHORITY OF AGENTS.

7928. Agency defined.

Cited in *Denhert et al. v. Union Central Life Ins. Co.*, 74 Mont. 104, 109, 239

Pac. 773; *Butte Floral Co. v. Reed*, 65 Mont. 138, 152, 211 Pac. 325.

7930. Agents, general or special.

A local fire insurance agent whose authority was not limited in any way was the general agent of the company—its vice-principal—and as such will be deemed to have had exclusive charge and control of its interests in the city of his location and the region tributary thereto. *Wells-Dickey Co. v. American Alliance Ins. Co.*, 69 Mont. 586, 223 Pac. 489.

Cited in *Susser v. Delovage et al.*, 73 Mont. 354, 359, 236 Pac. 1082; *Northwestern E. E. Co. v. Leighton et al.*, 66 Mont. 529, 537, 213 Pac. 1094.

For text treatment of this subject see vol. 1 Cal. Jur. 693.

7933. Ostensible agency.

Cited in *Union Bank & Trust Co. v. Lynn*, 73 Mont. 473, 479, 237 Pac. 490; as section 5418, Revised Codes, in *Hartt*

v. Jahn et al., 59 Mont. 173, 182, 196 Pac. 153.

7939. Form of authority.

Cited as section 5424, Revised Codes, in *Hartt v. Jahn et al.*, 59 Mont. 173, 181, 196 Pac. 153.

7940. Ratification of agent's act.

Before a principal may be said to have ratified an unauthorized act of his agent, it must be shown that the former accepted the results of the act of the latter with intent to ratify and with full knowledge of all the material circumstances. *Outlook F. E. Co. v. American S. Co.*, 70 Mont. 8, 223 Pac. 905.

To constitute ratification of an agent's act, there must be an acceptance by the principal of the results of the act with an intent to ratify and with full knowledge of all the material circumstances. *Pew v. McLeish*, 62 Mont. 437, 205 Pac. 235.

What amounts to ratification of contract negotiated by agent acting for both parties, note, 48 A. L. R. 926.

What constitutes ratification which will make lender responsible for his agent's exaction of a bonus from the borrower, note, 21 A. L. R. 854.

Wife's acceptance of benefits as rendering her liable for husband's torts, note, 12 A. L. R. 1477.

Insurance company's liability for libel or slander by its agents on theory of ratification, note, 13 A. L. R. 1146.

For text treatment of this subject see vol. 1 Cal. Jur. 776.

7941. Ratification of part of a transaction.

Where at the solicitation of the agent of a bank defendant executed a promissory note, transferred personal property as collateral, and then entered into a written agreement with the agent that the maker should not be held liable on the note, the three contracts constituted but a single transaction, by accepting the benefits flowing from a portion of which the bank, under this section, ratified the

whole thereof and was not in a position to assert that in agreeing to relieve defendant from liability on the note the agent exceeded his authority. *United States Nat. Bank v. Chappell*, 71 Mont. 553, 230 Pac. 1084.

For text treatment of this subject see vol. 1 Cal. Jur. 782.

7942. When ratification void.

This and the following section were cited as sections 5427, 5428, Revised Codes, in *Kirkup v. Anaconda Amuse-*

ment Co., 59 Mont. 469, 478, 17 A. L. R. 441, 197 Pac. 1005.

7943. Ratification not to work injury to third person.

Cited in *Corey v. Sunburst Oil & Gas Co.*, 72 Mont. 383, 398, 233 Pac. 909; as section 5428, Revised Codes, in *Kirkup*

v. Anaconda Amusement Co., 59 Mont. 469, 478, 17 A. L. R. 441, 197 Pac. 1005.

7945. Measure of agent's authority.

Where the certificate of authority of a local fire insurance agent did not show that he was empowered to waive notice and proof of loss, and there was no proof of ostensible authority in him so to do, the agent was without authority to waive the conditions. *Careve v. Phoenix Ins. Co.*, 67 Mont. 236, 215 Pac. 235.

Cited in *Eastman Kodak Co. v. Sibley et al.*, 72 Mont. 338, 343, 233 Pac. 613; *Butte Floral Co. v. Reed*, 65 Mont. 138, 152, 211 Pac. 325.

Authority of agent to indorse and transfer commercial paper, note, 12 A. L. R. 111.

Implied authority of agent to bind employer for funeral expenses, note, 29 A. L. R. 457.

Necessity and sufficiency of notice of termination of authority of agent to purchase goods for mercantile business to charge one who has previously dealt with him, note, 43 A. L. R. 1219.

For text treatment of this subject see vol. 1 Cal. Jur. 713.

7947. Ostensible authority defined.

Cited in *Eastman Kodak Co. v. Sibley et al.*, 72 Mont. 338, 343, 233 Pac. 613; *Mahoney Brothers v. Hansen Packing Co.*, 67 Mont. 120, 123, 215 Pac. 506; *May-*

field v. Montana Life Ins. Co., 62 Mont. 535, 545, 205 Pac. 669; as section 5432, Revised Codes, in *Hartt v. Jahn et al.*, 59 Mont. 173, 182, 196 Pac. 153.

7948. Agent's authority as to persons having notice of restrictions upon it.

Cited in *Careve v. Phoenix Ins. Co.*, 67 Mont. 236, 243, 215 Pac. 235.

7949. Agent's necessary authority.

Cited in *Mahoney Brothers v. Hansen Packing Co.*, 67 Mont. 120, 123, 215 Pac. 506.

7952. Exceptions to general authority.

Cited as section 5437, Revised Codes, in *Crowley et al. v. Rorvig*, 61 Mont. 245, 262, 203 Pac. 496.

CHAPTER 54.

MUTUAL OBLIGATIONS BETWEEN PRINCIPALS, AGENTS AND THIRD PERSONS.

7957. Principal—How affected by acts of agent within the scope of his authority.

Cited in *Healy v. Ginoff et al.*, 69 Mont. 116, 131, 220 Pac. 539; as section 5442, Revised Codes, in *Hoffman v. Roehl*

et al., 61 Mont. 290, 297, 20 A. L. R. 189, 203 Pac. 349.

7959. Notice to agent—When notice to principal.

Under this section, plaintiff corporation must be deemed to have had notice of the facts known to its manager in entering into an agreement whereby its debtor was released from liabilities by his assignment for the benefit of creditors, and its voluntary acceptance of the benefits of the transaction was equivalent to a con-

sent to it. *Stone-Ordean-Wells Co. v. Anderson et al.*, 66 Mont. 64, 212 Pac. 853.

Cited in *Healy v. Ginoff et al.*, 69 Mont. 116, 131, 220 Pac. 539.

For text treatment of this subject see vol. 1 Cal. Jur. 847.

7961. For acts done under a mere ostensible authority.

Cited in *Healy v. Ginoff et al.*, 69 Mont. 116, 131, 220 Pac. 539.

7965. Principal's responsibility for agent's negligence or omission.

Cited as section 5450, Revised Codes, in *Hoffman v. Roehl et al.*, 61 Mont. 290, 297, 20 A. L. R. 189, 203 Pac. 349.

CHAPTER 55.

DELEGATION AND TERMINATION OF AGENCY.

7973. Subagent, rightfully appointed, represents principal.

An agent of the receiver of the assignee of a promissory note stands in the same position as the receiver, his principal; and a receiver occupies the same position as his insolvent principal prior to the former's appointment. *Erlandson*

v. Erskine et al., 76 Mont. 537, 248 Pac. 209.

For text treatment of this subject see vol. 1 Cal. Jur. 727.

CHAPTER 57.

PARTNERSHIP IN GENERAL—HOW CONSTITUTED.

7981. Partnership defined.

Sections 7981, 7982, were cited in *Miles v. Miles*, 76 Mont. 375, 379, 247 Pac. 328; *Bresee v. Smith et al.*, 73 Mont. 312, 317,

237 Pac. 492; *Gardiner v. Eclipse Grocery Co.*, 72 Mont. 540, 544, 234 Pac. 490.

CHAPTER 58.

PARTNERSHIP IN GENERAL—PARTNERSHIP PROPERTY AND MUTUAL OBLIGATIONS OF PARTNERS.

7984. Partner's interest in partnership property.

Cited as section 5469, Revised Codes, in *Mares v. Mares et al.*, 60 Mont. 36, 52, 199 Pac. 267.

7989. Partners trustees for each other.

Sections 7989-7992 were cited as sections 5474-5477, Revised Codes, in *Call v. Marcum*, 62 Mont. 73, 77, 203 Pac. 855.

7990. Good faith to be observed between them.

In an action for damages for the wrongful dissolution of a banking partnership, evidence showing that plaintiff changed the combination of the bank safe, so that defendant did not have access thereto, and subsequently removed and secreted all of the assets of the firm in a bank in another city, etc., held to show such breach of faith, and wilful

violation of the letter as well as the spirit of the trust imposed upon partners by this section, as justified defendant in dissolving the partnership. *Call v. Marcum*, 62 Mont. 73, 203 Pac. 855.

For text treatment of this subject see vol. 20 Cal. Jur. 729.

7991. Mutual liability of partners to account.

Cited in *Harri v. Farmers' Co-operative Co.*, 69 Mont. 149, 153, 223 Pac. 109; as

section 5476, Revised Codes, in *Call v. Marcum*, 62 Mont. 73, 77, 203 Pac. 855.

CHAPTER 60.

GENERAL PARTNERSHIP — POWERS, OBLIGATIONS AND LIABILITY OF PARTNERS.

7997. Authority of individual partner.

Notes executed by one member of a trading partnership for the benefit of the firm, were partnership obligations, binding upon all its members, in the absence of a showing of bad faith on the part of the contracting partner, and, if bad faith existed, of knowledge thereof on the part of the payee. *Reid v. Linder et al.*, 77 Mont. 406, 251 Pac. 157.

Sections 7997, 7998 were cited in *Miles v. Miles*, 76 Mont. 375, 379, 247 Pac.

328; *Harri v. Farmers' Co-operative Co.*, 69 Mont. 149, 153, 223 Pac. 109.

Authority of member of farming partnership to execute negotiable paper, note, 9 A. L. R. 372.

Right of one who accepts firm assets or obligation upon account of an individual indebtedness of, or transaction with, a partner, note, 50 A. L. R. 432.

For text treatment of this subject see vol. 20 Cal. Jur. 742.

7998. What authority partner has not.

Under this section, one partner has no authority to dispose of the whole of the partnership property at once, and if so sold, the nonconsenting partner has his action against the purchaser as for a conversion. *Kotsakis v. Williamson*, 72 Mont. 158, 231 Pac. 1104.

Power of partner to dispose of goodwill of business, note, 5 A. L. R. 1182.

For text treatment of this subject see vol. 20 Cal. Jur. 746.

7999. Partner's acts in bad faith—When ineffectual.

Cited in *Reid v. Linder et al.*, 77 Mont. 406, 419, 251 Pac. 157.

8004. Liability of partners to third person.

Cited in *State ex rel. Butte etc. Co. v. District Court*, 75 Mont. 567, 580, 244 Pac. 489.

8006. Liability of one held out as partner.

Sections 8006, 8007 were cited in *Bresee v. Smith et al.*, 73 Mont. 312, 317, 237 Pac. 492.

CHAPTER 61.

GENERAL PARTNERSHIP—DISSOLUTION AND LIQUIDATION.

8009. Total dissolution of partnership.

Cited in *Reid v. Linder et al.*, 77 Mont. 406, 421, 251 Pac. 157; as section 5494, Revised Codes, in *Mares v. Mares et al.*, 60 Mont. 36, 45, 52, 199 Pac. 267.

8010. Partial dissolution.

Cited as section 5495, Revised Codes, in *Call v. Marcum*, 62 Mont. 73, 77, 203 Pac. 855.

8011. Partner entitled to dissolution.

Cited as section 5496, Revised Codes, in *Call v. Marcum*, 62 Mont. 73, 78, 203 Pac. 855.

8012. Notice of termination.

In the absence of the notice required by this section, of the dissolution of a partnership, the liability of the members of the firm for a note executed to a bank by one of them continued even though at the time of its execution dissolution had been effected, and the maker of it was

an officer of the payee bank. *Reid v. Linder et al.*, 77 Mont. 406, 251 Pac. 157.

Salesman's notice of withdrawal as chargeable to principal, note, 43 A. L. R. 748.

For text treatment of this subject see vol. 20 Cal. Jur. 798.

CHAPTER 62.

GENERAL PARTNERSHIP—USE OF FICTITIOUS NAMES.

8019. Fictitious name.

Sections 8019 and 8020 were cited in *Gardiner v. Eclipse Grocery Co.*, 72 Mont.

540, 548, 234 Pac. 490; *Canonica v. St. George*, 64 Mont. 200, 204, 208 Pac. 607.

8024. Individual using fictitious name in business must file certificate.

If the name under which a business is transacted fairly discloses the true name of the individual (or of each partner in case of a partnership), the statute requiring the filing of a certificate disclosing the true name (or names) does not apply; otherwise the name used is fictitious and the requirement must be met. *Canonica v. St. George*, 64 Mont. 200, 208 Pac. 607.

Where plaintiff, in an action for work and labor performed, doing business under the fictitious name of "Tony's Tin Shop," in which the special defense that he had not filed the certificate required by this section had been erroneously stricken on

motion of plaintiff, had made out a prima facie case and there was not any evidence before the court that he had not complied with the statute, the granting of a nonsuit on the ground that he had not proved compliance with the provisions of the section, was error. *Canonica v. St. George*, 64 Mont. 200, 208 Pac. 607.

For text treatment of this subject see vol. 19 Cal. Jur. 522.

Statutes as to doing business under assumed name or designation not showing the names of the persons interested, note, 45 A. L. R. 198.

CHAPTER 63.

SPECIAL PARTNERSHIP—FORMATION.

8025. Formation of special partnership.

Cited in *State ex rel. Butte etc. Co. v. District Court*, 75 Mont. 567, 580, 244 Pac. 489.

8028. Acknowledged and recorded—False statement.

Parol proof of statements alleged to have been made by parties since deceased to an oral contract to devise property by will, being subject to much imperfection and mistake, and there being strong temptation to a dishonest witness to fabricate such evidence, should be received

with great caution. *Sanger v. Huguenel*, 65 Mont. 236, 211 Pac. 349.

Cited in *Harwood v. Scott*, 65 Mont. 521, 530, 211 Pac. 316.

For text treatment of this subject see vol. 1 Cal. Jur. 224, 262; vol. 20 Cal. Jur. 715.

CHAPTER 66.

MINING PARTNERSHIPS.

8050. When a mining partnership exists.

Such an interest in a mine, under agreement with lessees, as will support claim of a mining partnership as defined by this section, existing between those actually engaged in working the mine, was held not established by the evidence. *Crystal*

Copper Co. v. Gaido et al., 5 Fed. (2d) 881.

For text treatment of this subject see vol. 17 Cal. Jur. 439.

CHAPTER 68.

PARTIES—INSURABLE INTEREST.

8070. Insurable interest defined.

Cited in *Pasherstnik v. Continental Ins. Co.*, 67 Mont. 19, 22, 214 Pac. 603.

CHAPTER 69.

CONCEALMENT AND REPRESENTATION.

8085. What must be disclosed.

Cited as section 5570, Revised Codes, in *Williams v. Mutual Life Ins. Co. of N. Y.*, 61 Mont. 66, 72, 201 Pac. 320.

CHAPTER 71.

WARRANTIES—THE PREMIUM.

8132. Return of premium.

Where by the constitution and by-laws of a fraternal insurance society it was made the duty of the insured to notify the insurer of the fact of his suspension from the subordinate lodge, which he failed to do, and forfeiture of the certificate of insurance ipso facto resulted from suspension, but the insurer, without knowledge of the suspension, for seven years thereafter accepted premiums from the insured, his beneficiaries could not have recovered on the certificate in case

of his death because of forfeiture, and hence he was entitled to a return of the premiums for failure of consideration under this section. *Osborne v. Supreme Lodge etc. Ins. Dept.*, 69 Mont. 361, 222 Pac. 456.

Rejection of policy by applicant as entitling him to recover back premium previously paid, vol. 41 A. L. R. 644.

For text treatment of this subject see vol. 14 Cal. Jur. 476.

8134. Return for fraud.

Cited in *Osborne v. Supreme Lodge etc. Ins. Dept.*, 69 Mont. 361, 365, 222 Pac. 456.

CHAPTER 72.

LOSS AND NOTICE OF LOSS.

8143. Preliminary proofs.

The provision in a health policy requiring written notice within ten days after commencement of disability from sickness must be read in connection with this section providing that where preliminary proof of loss is required by a policy, the insured need not give such proof as is necessary in a court of justice, it being sufficient if he give the best evidence which it is in his power to give

at the time; held, further, that conditions may be such as to relieve insured from giving any notice whatever except that contained in his final proof of disability. *Wick v. Western Life & Casualty Co.*, 60 Mont. 553, 199 Pac. 272.

For text treatment of this subject see vol. 14 Cal. Jur. 570.

8144. Waiver of defects in notice, etc.

Under this section and 8145, defects in proofs of loss sustained by fire may be waived, and were waived by an adjuster of defendant insurance company by advising plaintiff that the proofs exhibited to him, after certain amendments made, were "all right." *Morrison v. Concordia Fire Ins. Co. et al.*, 72 Mont. 97, 231 Pac. 905.

Where insured had failed to furnish a sworn statement of proof of loss as he was required to do under the provisions

of the policy, but the company's adjuster, notwithstanding such failure, had made offers of settlement, defendant waived the requirement of the policy, even though the policy provided that such act on the part of its adjuster should not constitute a waiver. *Pasherstnik v. Continental Ins. Co.*, 67 Mont. 19, 214 Pac. 603.

For text treatment of this subject see vol. 14 Cal. Jur. 575.

8145. Waiver of delay.

Under this section, where suit on a fire insurance policy is commenced within time, delay in the presentation of notice or proof of loss is waived if caused by the act of the insurer, or if he omits to make prompt and specific objection on that ground; but to entitle the insured to take advantage of this provision he must plead the waiver. *Krause v. Insurance Co. of North America*, 73 Mont. 169, 235 Pac. 406.

Notwithstanding a clause in a hail insurance policy that defendant company's agents had not the power to orally waive any of its provisions, they may, under this section, be held to have waived a provision therein for proof of loss by failing to promptly advise the insured, in

their negotiations for settlement, that delay in payment of the loss was caused by absence of proof of loss or that the company would rely upon his omission to make the necessary proof. *Ames v. Minneapolis F. & M. Ins. Co.*, 69 Mont. 177, 220 Pac. 747.

Cited in *La Bonte v. Mutual Fire Ins. Co.*, 75 Mont. 1, 12, 241 Pac. 631.

Applied with section 8144 in *Morrison v. Concordia Fire Ins. Co. et al.*, 72 Mont. 97, 231 Pac. 905; *Pasherstnik v. Continental Ins. Co.*, 67 Mont. 19, 27, 214 Pac. 603.

For text treatment of this subject see vol. 14 Cal. Jur. 575.

CHAPTER 75.

FIRE INSURANCE.

8160. Assignee, etc., of life policy need have no interest.

A life insurance policy provided that an assignment thereof should be binding upon the company only if executed upon blanks furnished by it. Notwithstanding this provision of the policy, an assign-

ment was valid though not made upon one of its blanks. *Capital Finance Corp. v. Metropolitan L. I. Co.*, 75 Mont. 460, 243 Pac. 1061.

CHAPTER 77.

INDEMNITY.

8163. Indemnity defined.

Where, for the purpose of inducing the purchase of corporate stock, the seller gave the buyer a promissory note payable in three years, the back of which bore the indorsement that when the stock had paid dividends to the amount of the purchase price, the note should be void, the agreement, evidenced by the note and in-

dorsement, was one of indemnity within the meaning of this section, and not of guaranty. *Peterson v. Nelson*, 77 Mont. 539, 252 Pac. 368.

For text treatment of this subject see vol. 13 Cal. Jur. 977.

8169. Rules for interpreting agreement of indemnity.

In an action on an indemnity policy of the nature of the above, the burden is upon the insurer to rebut the presumption provided for by this section, that if after request the insurer neglects to defend the person indemnified, a recovery against the latter suffered by him in good faith is conclusive in his favor against the insurer. *Independent M. & C. Co. v. Aetna L. I. Co.*, 68 Mont. 152, 216 Pac. 1109.

Defense by insurer of action against insured as affecting provision making payment of judgment condition of liability, note, 37 A. L. R. 637.

Construction and operation of clause in policy prohibiting assured from incurring expense, note, 34 A. L. R. 730.

For text treatment of this subject see vol. 13 Cal. Jur. 986.

CHAPTER 78.

GUARANTY—DEFINITION, CREATION AND INTERPRETATION.

8171. Guaranty defined.

For discussion of distinction between the contract of guaranty and that of suretyship, and holding that the principal debtor and guarantor cannot be joined as defendants, see *Butte Machinery Co. v. Carbonate Hill Mining Co.*, 75 Mont. 167, 242 Pac. 956.

Although the contract of guaranty is collateral to the contract of the principal debtor, the two are distinct and independent, there being, as to the contract of guaranty, no privity, mutuality or joint liability between the principal debtor and his guarantor. *Baroch v. Greater Montana Oil Co.*, 70 Mont. 93, 225 Pac. 800.

Contracts of guaranty distinguished from those of surety in *Emerson-Brant-*

ingham Co. v. Raugstad, 65 Mont. 297, 211 Pac. 305.

Cited in *Peterson v. Nelson*, 77 Mont. 539, 549, 252 Pac. 368; *Anderson v. Border et al.*, 75 Mont. 516, 525, 244 Pac. 494; *Northwestern F. & M. Ins. Co. v. Pollard*, 74 Mont. 142, 150, 238 Pac. 594; *Muri v. Young*, 75 Mont. 213, 218, 245 Pac. 956; *Minneapolis Thresh. Machine Co. v. Jameison*, 70 Mont. 27, 32, 223 Pac. 893; *State ex rel. Barnett v. Reynolds et al.*, 68 Mont. 572, 576, 220 Pac. 525; *Mulany v. Murray*, 68 Mont. 245, 251, 216 Pac. 1105; *Square Butte State Bank v. Ballard*, 64 Mont. 554, 560, 210 Pac. 889.

For text treatment of this subject see vol. 13 Cal. Jur. 83.

8173. Necessity of a consideration.

Where a promissory note was not accepted until a guaranty was produced about a week after the execution of the note, and the two instruments were delivered together, plaintiff in an action on the guaranty was not required to show an independent consideration for it, a showing of consideration for the note having

been sufficient under this section. *Schauer v. Morgan et al.*, 67 Mont. 455, 216 Pac. 347.

Cited in *Doorly v. Goodman*, 71 Mont. 529, 537, 230 Pac. 779.

For text treatment of this subject see vol. 13 Cal. Jur. 100.

8174. Guaranty to be in writing, etc.

Where a liability in the nature of a guaranty is imposed by law, it does not fall within the provision of this section requiring a contract of guaranty to be in

writing. *Muri v. Young*, 74 Mont. 213, 245 Pac. 956.

For text treatment of this subject see vol. 13 Cal. Jur. 100; 12 Cal. Jur. 906.

CHAPTER 79.**LIABILITY AND EXONERATION OF GUARANTORS—CONTINUING GUARANTY.****8181. Guaranty—How construed.**

Sections 8181, 8182 were cited in *Northwestern F. & M. Ins. Co. v. Pollard*, 74 Mont. 142, 150, 238 Pac. 594; *Square*

Butte State Bank v. Ballard, 64 Mont. 554, 560, 210 Pac. 889.

8182. Liability upon guaranty of payment or performance.

Cited in *Minneapolis Thresh. Machine Co. v. Jameison*, 70 Mont. 27, 32, 223 Pac. 893; *Mulany v. Murray*, 68 Mont.

245, 251, 216 Pac. 1105; *Square Butte State Bank v. Ballard*, 64 Mont. 554, 564, 210 Pac. 889.

8191. Part performance.

Cited in *Mutual Oil Co. v. Hamilton et al.*, 73 Mont. 385, 391, 236 Pac. 545.

8192. Delay of creditor does not discharge guarantor.

Cited in *Northwestern F. & M. Ins. Co. v. Pollard*, 74 Mont. 142, 150, 238 Pac. 594.

CHAPTER 80.**SURETYSHIP—SURETIES AND THEIR LIABILITY.****8195. Surety defined.**

Cited in *Butte Machinery Co. v. Carbonate Hill Mining Co.*, 75 Mont. 167, 170, 242 Pac. 956; *State ex rel. Barnett*

v. Reynolds et al., 68 Mont. 572, 576, 220 Pac. 525.

8201. Surety discharged by certain acts of the creditor.

Sections 8201, 8202 were cited in *Mutual Oil Co. v. Hamilton et al.*, 73 Mont. 385, 391, 236 Pac. 545.

CHAPTER 81.**RIGHTS OF SURETIES AND CREDITORS.****8203. Surety has rights of guarantor.**

Under this section and 8207, the surety on a bond of a road contractor given the state highway commission pursuant to section 1790 acquired an equity in the earnings of the contractor remaining in the hands of the commission, superior to that of a bank to which the contractor had made an assignment of moneys due him under the contract as security for loans extended, and was entitled to have the funds retained by the commission applied in satisfaction of labor and ma-

terial claims, payment of which was secured by the bond, before any portion of it was paid to the assignee. *Lanstrum et al. v. Zumwalt et al.*, 73 Mont. 502, 237 Pac. 205.

Right of surety or his privies to require creditor to resort to security given by principal before enforcing security given by surety, note, 37 A. L. R. 1262.

For text treatment of this subject see vol. 23 Cal. Jur. 1039, 1070.

8206. The surety acquires the right of the creditor.

An action by a surety for contribution from his cosurety is one on an implied contract for money paid by the former for the use and benefit of the latter, which the latter unconditionally and absolutely is required to pay, under this section, in a definite sum, to wit, his proportion of the amount which plaintiff

was required to pay on the undertaking; hence the action is one for the direct payment of money in which attachment may issue. *Wall v. Brookman*, 72 Mont. 228, 232 Pac. 774.

For text treatment of this subject see vol. 23 Cal. Jur. 931, 1078.

8207. Surety entitled to benefit of securities held by creditor.

Applied with section 8203 in *Lanstrum et al. v. Zumwalt et al.*, 73 Mont. 502, 237 Pac. 205.

8209. Creditor entitled to benefit of securities held by surety.

Cited in *Kinyon Inv. Co. v. Belmont State Bank*, 69 Mont. 282, 287, 221 Pac. 286.

CHAPTER 83.

LIENS IN GENERAL—DEFINITION, CREATION AND EFFECT.

8224. Contracts subject to provisions of this chapter.

Cited in *Morrison v. Farmers' etc. State Bank*, 70 Mont. 146, 152, 225 Pac. 123; *Hackney v. Birely*, 67 Mont. 155, 158, 215 Pac. 642.

8227. Lien on future interest.

Cited in *Security State Bank v. Mariette*, 69 Mont. 536, 539, 223 Pac. 114; as section 5712, Revised Codes, in *Hackney v. Birely*, 67 Mont. 155, 158, 215 Pac. 642.

8229. Lien, or contract for lien, transfers no title.

Cited in *Morrison v. Farmers' etc. State Bank*, 70 Mont. 146, 152, 225 Pac. 123.

8233. Creditor may enforce obligation.

Cited in *Vande Veegaete v. Vande Veegaete*, 75 Mont. 52, 57, 243 Pac. 1082.

CHAPTER 85.

REDEMPTION FROM LIENS—EXTINCTION OF LIENS.

8241. Lien deemed accessory to the act whose performance it secures.

Cited in *Oregon Mortgage Co. v. Kunneke et al.*, 76 Mont. 117, 125, 245 Pac. 539; *Thompson v. Twodot Fertilizer Co. et al.*, 71 Mont. 486, 492, 230 Pac. 588.

8242. Extinction by sale or conversion.

Cited in *Oregon Mortgage Co. v. Kunneke et al.*, 76 Mont. 117, 127, 245 Pac. 539.

8243. Lien extinguished by lapse of time under statute of limitations.

Section 8267 is in effect a statute of limitations operating as an amendment of this section. *Morrison v. Farmers' etc. State Bank*, 70 Mont. 146, 225 Pac. 123.

For text treatment of this subject see vol. 16 Cal. Jur. 327.

CHAPTER 86.

MORTGAGES IN GENERAL.

8246. Mortgage defined.

A contract for the cultivation of farm land on shares by the terms of which the land owner reserves title in himself to the lessee's share as security for advances made by him to the lessee is in legal effect a chattel mortgage, and as such, subject to the provision of the

chattel mortgage statute with reference to execution and filing. *Crone v. Occident Elevator Co. et al.*, 70 Mont. 211, 224 Pac. 659.

For text treatment of this subject see vol. 17 Cal. Jur. 696.

8251. Mortgage—On what a lien.

Cited in *State ex rel. Continental S. Co. v. Tullock*, 68 Mont. 268, 276, 217 Pac. 348; as section 5736, Revised Codes,

in *Samuell v. Moore Merc. Co. et al.*, 62 Mont. 232, 236, 204 Pac. 376.

8252. Mortgage does not entitle mortgagee to possession.

In the absence of an express agreement between the parties to a mortgage upon land that upon default on the part of the mortgagor, the mortgagee shall have the right to enter and take possession, such right does not exist. *Sharp Bros., Inc., v. Bartlett*, 76 Mont. 415, 248 Pac. 199.

Quaere: In an action in ejectment, may plaintiff's mortgagee intervene, in view of this section and section 9495, providing that a mortgagee is not entitled to the possession of the property mortgaged

unless possession is specially authorized by its terms, and that a mortgage of real property shall not be deemed a conveyance. *Stack v. Coyle*, 59 Mont. 444, 197 Pac. 747.

Cited in *Union Central Life Ins. Co. v. Jensen*, 74 Mont. 70, 75, 237 Pac. 518; as section 5737, Revised Codes, in *Samuell v. Moore Merc. Co. et al.*, 62 Mont. 232, 236, 204 Pac. 376.

For text treatment of this subject see vol. 17 Cal. Jur. 1010, 1016.

8253. Mortgage not a personal obligation.

Cited in *Kinyon Inv. Co. v. Belmont State Bank*, 69 Mont. 282, 288, 221 Pac. 286.

8255. Subsequently acquired title inures to mortgagee.

Where defendant in foreclosure action had executed a promissory note secured by a mortgage upon a desert land entry which, after final certificate had been issued to him, was canceled, whereupon he entered the land as a homestead and received patent, the lien of the mortgage on the desert entry attached to the homestead entry and defendant was estopped, under this section to claim the benefit of section 2296, U. S. Revised Statutes, providing that lands acquired under the homestead laws shall not in any event become liable to the satisfaction of debts contracted prior to issuance of patent. *Stockmen's Nat. Bank v. Sutherland*, 71 Mont. 457, 230 Pac. 369.

The rule declared by this section that title acquired by the mortgagor subsequent to the execution of the mortgage inures to the mortgagee as security for

the debt, applies to land, title to which at the time the mortgage was given was in the federal government and was subsequently acquired therefrom under the homestead laws. *Lohman State Bank v. Grim*, 69 Mont. 444, 222 Pac. 1052.

A mortgage upon a desert land entry given by the entryman as security for an antecedent debt before final proof made or patent issued is enforceable against the mortgagor after patent issues to him, the title thus subsequently acquired by the mortgagor inuring to the benefit of the mortgagee, under this section and the mortgagor being estopped to deny the validity of the mortgage. *Selway v. Daut et al.*, 67 Mont. 262, 215 Pac. 646.

For text treatment of this subject see vol. 17 Cal. Jur. 855.

8259. Recording assignments of mortgages. An assignment of a real estate mortgage may be recorded in like manner as a mortgage and such record shall operate as due and legal notice to the mortgagor and all persons subsequently deriving title to the mortgage from the assignor and all persons interested.

Such assignment shall contain the assignee's postoffice address at his place of residence and shall not be entitled to be recorded unless it contains such postoffice address.

Amd. Sec. 1, Ch. 14, L. 1925.

For text treatment of this subject see vol. 18 Cal. Jur. 85, 96; 5 Cal. Jur. 83.

8261. Mortgage passes by assignment of debt.

Cited in *First Nat. Bank of Saco v. Vagg et al.*, 65 Mont. 34, 39, 212 Pac. 509.

CHAPTER 87.

MORTGAGES OF REAL PROPERTY.

8262. What real property may be mortgaged.

Cited in *Selway v. Daut et al.*, 67 Mont. 262, 267, 215 Pac. 646.

8264. Mortgage renewed or extended by writing.

Cited as section 5749, Revised Codes, *Farmers' etc. State Bank*, 70 Mont. 146, 152, 225 Pac. 123.
in *Wray v. Great Falls Paper Co.*, 72 Mont. 461, 234 Pac. 486; *Morrison v.*

8267. Period of lien of mortgage—Extension.

Where the record on appeal in a foreclosure suit was silent as to when the indebtedness secured by the mortgage became due, or that a certain debt secured by it had been paid, the finding that the plaintiff mortgagee was entitled to a decree will be presumed supported by the evidence, thus rendering untenable the contention that the mortgage had expired under this section, and that payment of the amount due had been made. *First Nat. Bank of Missoula v. Marlowe et al.*, 71 Mont. 461, 230 Pac. 374.

This section, declaring that a mortgage on real property, duly recorded, is good and valid against the creditors of the mortgagor or subsequent purchasers or encumbrancers, for eight years and no

longer, unless the renewal affidavit provided for therein be filed, is not a recording statute, affecting notice, but is a statute of limitations, affecting the remedy, the effect of which is that such a mortgage, in the absence of the renewal affidavit, ceases to be of binding force as against the persons mentioned and becomes unenforceable by the lapse of eight years from the maturity of the debt or obligation secured. *Morrison v. Farmers' etc. State Bank*, 70 Mont. 146, 225 Pac. 123.

This section, construed as a statute of limitations, is not open to attack on constitutional grounds. *Morrison v. Farmers' etc. State Bank*, 70 Mont. 146, 225 Pac. 123.

8271. Satisfaction of mortgage.

Cited in *Solberg v. Sunburst Oil & Gas Co. et al.*, 70 Mont. 177, 181, 183, 225

Pac. 612; *Noyes Estate v. Granite-Alaska Co.*, 64 Mont. 406, 418, 210 Pac. 96.

8273. Certain corporate mortgages—How governed. All mortgages, deeds of trust, or assignments for the benefit of creditors, of both real and personal property, executed by a corporation, are governed by the law relating to mortgages, or deeds of trust of real property and must be recorded in the office of the county clerk of every county where any part of said property is situated, and the same are valid, notwithstanding

the possession of such property is retained by such corporation, but any such mortgages, deeds of trust, or assignments for the benefit of creditors must be accompanied by the affidavit of good faith required to accompany mortgages of personal property, which said affidavit may be made on behalf of any such corporation by the president, secretary or managing agent thereof.

Amd. Sec. 1, Ch. 39, L. 1927.

CHAPTER 88.

MORTGAGES OF PERSONAL PROPERTY.

8275. What property may be mortgaged—Advances—Preferences.

Any interest in personal property which is capable of being transferred may be mortgaged. Such property or interest may be mortgaged to secure existing debts, to secure debts created simultaneously with the execution of the mortgage and to secure advances then in contemplation but to be made in the future. Amounts constituting existing debts or obligations shall have a preference lien as against future advances, and advances made under the terms of the mortgage shall have preference in the order in which said amounts are advanced by the mortgagee to the mortgagor. The total amount of all advances contemplated and to be subject to mortgage protection must be stated in the mortgage and with the original debt shall constitute a preference lien for the life of the mortgage for the maximum amount provided in the mortgage as against all mortgages and other intervening liens subsequent in date to the time of the filing of the mortgage; excepting that the lien for services rendered by a thresherman as specified in section 8366 of the Revised Codes of Montana 1921, shall be prior to and have precedence over any mortgage, encumbrance or other lien upon said grain or other crops; also excepting the lien for the seed furnished for the purpose of growing this particular crop as specified in section 8359, which said seed lien shall have priority over all other liens and encumbrances thereon except the said thresherman's liens and also excepting any other lien given priority by statute. The mortgagee shall upon demand of the mortgagor or a creditor furnish a statement of all such advances and amounts paid on the principal sum secured, provided such statement shall not impair or affect the lien created for all advances.

Amd. Sec. 1, Ch. 32, L. 1923; Amd. Sec. 1, Ch. 116, L. 1925.

Subsequently to be acquired personal property may be mortgaged, provided it is such as is capable of delivery, and such as may be taken possession of by the mortgagee upon its acquisition by the mortgagor. *Security State Bank v. Mariette*, 69 Mont. 536, 223 Pac. 114.

While a mortgagor of personal property may include in the mortgage property thereafter to be acquired by him, such property must be described so accurately that third persons consulting the record may be put on notice as to what is intended to be mortgaged, and if not

so described as to enable the sheriff to identify such property, the mortgage as to it is void as against such third persons. *Hackney v. Birely*, 67 Mont. 155, 215 Pac. 642.

The purchaser of personal property under a conditional sale contract whereby title was reserved in the seller until full payment made had a mortgageable interest in it. *Hoeller v. Moog et al.*, 60 Mont. 74, 198 Pac. 367.

Sections 8275-8291, were cited as chapter 86, session Laws of the Laws of the Thirteenth Legislative Assembly, in *Fergus Motor Co. v. Sorenson*, 73 Mont. 122, 130, 235 Pac. 422; as chapter 86, L. 1913,

in *First Nat. Bank v. Montana Emporium Co.*, 59 Mont. 584, 593, 197 Pac. 994.

For text treatment of this subject see vol. 5 Cal. Jur. 46.

8276. Execution—Affidavit of good faith—Copy of mortgage and receipt.

Under the rule that an instrument not entitled to record, though actually recorded, does not impart any constructive notice whatever, held that, where a chattel mortgage was not entitled to filing because of the absence of a receipt attached thereto showing that the mortgagee had surrendered to the mortgagor a copy of the mortgage its filing imparted no notice to the conditional vendor of the property, mortgaged by the vendee after the sale, and the contract of sale was properly admitted in evidence in defense to an action for the conversion of the property taken by defendant vendor under the provisions of the contract upon condition broken. *Doering v. Selby et al.*, 75 Mont. 416, 244 Pac. 485.

This section as amended provides that in order to entitle a chattel mortgage to be filed it must have attached thereto a receipt showing that the mortgagor received a copy of the mortgage. A receipt appeared immediately below the signature of the mortgagor and above the acknowledgment and affidavit of good faith and recited that a "true, full and complete copy of the foregoing mortgage" had been received. Held, that the statute must be liberally construed, that, so construed, the contention that the mortgage was not en-

titled to be filed because the receipt referred only to what preceded it in point of arrangement and not to what followed and was therefore incomplete has no merit, and that the mortgage conformed substantially to the above requirement. *Swords v. Occident Elevator Co.*, 72 Mont. 189, 232 Pac. 189.

Where one takes a second mortgage on chattels with actual notice of the existence of the prior lien, the fact that the first mortgage does not have an affidavit of good faith attached thereto does not render the second mortgage superior to the first one. *Fergus County v. First State Bank of Hilger*, 67 Mont. 1, 213 Pac. 1114.

In an action by a trustee in bankruptcy to set aside chattel mortgages given by the bankrupt, the question of whether the mortgages were in fraud of creditors under sections 8276 and 8603 and 8606, being intended to hinder and delay them, under the evidence, which was conflicting, was for the jury. *Ignatius v. Farmers' State Bank of Havre*, 272 Fed. 33.

For text treatment of this subject see vol. 5 Cal. Jur. 53, 55.

8278. Filing of mortgages in office of county clerk.

The provision of this section for the filing of chattel mortgages is intended to impart notice only to creditors of the mortgagor and subsequent purchasers and encumbrancers in good faith for value. *Moore et al. v. Crittenden et al.*, 62 Mont. 309, 204 Pac. 1035.

Cited in *Hackney v. Birely*, 67 Mont. 155, 160, 215 Pac. 642.

For text treatment of this subject see vol. 5 Cal. Jur. 60.

8279. Duration of liens.

The record of a chattel mortgage as provided by this section is equivalent to a delivery of the property by the mortgagor to and its retention by the mortgagee, and therefore whatever cannot be delivered and retained, except as to property potentially in being in which the mortgagor has a personal interest,

cannot be placed of record. *Hackney v. Birely*, 67 Mont. 155, 215 Pac. 642.

Cited in *Morrison v. Farmers' etc. State Bank*, 70 Mont. 146, 154, 225 Pac. 123.

For text treatment of this subject see vol. 5 Cal. Jur. 62.

8280. Renewal of mortgages—Affidavit.

Cited in *Morrison v. Farmers' etc. State Bank*, 70 Mont. 146, 153, 225 Pac. 123.

8286. Foreclosure of mortgages—By action—By sale of property—Indemnity bond and notice of sale.

The requirements of this section, under which a mortgagee of chattels may have the same sold on default of the mortgagor in execution of the power granted to him by the terms of the mortgage, must be strictly complied with; otherwise jurisdiction to make it is absent and the sale does not divest the mortgagor of title. *Trudell v. Hingham State Bank*, 62 Mont. 557, 205 Pac. 667.

Where the notice of sale of chattel mortgaged property stated that a sale

of a portion of it would be had at a certain hour at a given place, and sale of another portion of it at a different place and hour, and all of it was sold at one place in violation of the statute and the provisions of the mortgage, the sale was void. *Trudell v. Hingham State Bank*, 62 Mont. 557, 205 Pac. 667.

Cited as section 5769, Revised Codes, in *Samuell v. Moore Merc. Co. et al.*, 62 Mont. 232, 236, 204 Pac. 376.

8290. Mortgage on growing crop, and the lien thereof.

Under this section the lien of a mortgage upon a growing crop for the purchase price of farm machinery attaches only to the crop next maturing after the execution of the mortgage. *Crone v. Occidental Elevator Co. et al.*, 70 Mont. 211, 224 Pac. 659.

In an action for the conversion of grain, the fact that defendant had actual knowledge of a contract made in 1919 under which plaintiff lessor of farm land claimed to be entitled to the possession of

a crop grown by the lessee as security for advances made by him to the lessee did not deprive him of his right as mortgagee of a crop grown by the lessee in 1921, the lien created in 1919 not attaching to the crop of 1921 under this section. *Crone v. Occidental Elevator Co. et al.*, 70 Mont. 211, 224 Pac. 659.

For text treatment of this subject see vol. 5 Cal. Jur. 46.

8290.1. Chattel mortgage may include increase when. A chattel mortgage given upon livestock, may, if specified therein, include all increase of like kind or progeny, and wool of such mortgaged animals, from year to year, during the life of the mortgage.

En. Sec. 1, Ch. 100, L. 1923.

Cited in *Hackney v. Birely*, 67 Mont. 155, 159, 215 Pac. 642.

Chattel mortgage on livestock as including increase, note, 39 A. L. R. 153.

For text treatment of this subject see vol. 5 Cal. Jur. 70.

8291. Penalty for removing mortgaged property or that covered by vendor's liens. Every person who, after mortgaging any personal property or having executed a conditional sale contract or agreement under the terms of which the title to said property remains in the vendor, except locomotives, engines, rolling stock or a railroad, steamboat machinery and vessels in actual use, removes or causes to be removed, or permits the removal of any such property during the existence of the lien thereon created by such mortgage, or while title to said property remains in the vendor, from the county where said property was situated at the time of the execution of such mortgage or such conditional sale contract or agreement; or, in case of a mortgaged crop, from the land on which the same was grown, or sells or removes said property or crop, or any part thereof, without the consent in writing of the mortgagee or vendor first had and obtained shall be guilty of a misdemeanor, but if such sale be made or removal had with intent to deprive the mortgagee or vendor of his claim thereto or interest therein, such person shall be guilty of larceny and shall be punished in the same manner and to the same extent as for larceny of the property so removed or disposed of.

Amd. Sec. 1, Ch. 23, L. 1923.

This section, forbidding the sale of mortgaged chattels without the consent of the mortgagee, is designed for his protection and does not declare such a sale void or impose any penalty upon the purchaser; and where a sale is made, the title of the mortgagor passes, the buyer acquiring whatever equity there is in

the property over and above the amount due upon the mortgage. *Puckett v. Hopkins et al.*, 63 Mont. 137, 206 Pac. 442. Cited in *Fergus Motor Co. v. Sorenson*, 73 Mont. 122, 132, 235 Pac. 422.

For text treatment of this subject see vol. 5 Cal. Jur. 120.

CHAPTER 89.**PLEDGE.****8292. Pledge defined.**

Cited in *Goriez v. Rock Creek Ditch Co. et al.*, 67 Mont. 566, 571, 216 Pac. 778.

8293. When contract is to be deemed a pledge.

The lien of a pledge is dependent upon possession and a pledge is therefore not valid until the property pledged is delivered to the pledgee or to a pledgeholder. *Goriez v. Rock Creek Ditch Co. et al.*, 67 Mont. 566, 216 Pac. 778.

For discussion of facts constituting a pledge of corporate stock, see *Goriez v. Rock Creek Ditch Co. et al.*, 67 Mont. 566, 216 Pac. 778.

For text treatment of this subject see vol. 21 Cal. Jur. 289.

8294. Delivery essential to validity of pledge.

Cited as section 5776, Revised Codes, in *Savage Tire Sales Co. v. Stuart et al.*, 61 Mont. 524, 528, 203 Pac. 364.

8299. Pledge-holder defined.

Cited in *Goriez v. Rock Creek Ditch Co. et al.*, 67 Mont. 566, 571, 216 Pac. 778.

8312. Pledgee's sale of securities.

Under this section, a pledgee bank to which collateral in the shape of promissory notes had been sent to secure a loan had no right to sell them but could only collect them when due. *Springhorn v. Roberts et al.*, 77 Mont. 395, 250 Pac. 1112.

Under this section, where a bank had pledged to another bank promissory notes owned by it, as security for indebtedness due, the latter bank was without authority to sell the collateral upon insolvency of the former, but was bound to hold and collect it when due and apply the proceeds to the payment of the debt secured. *State v. American Bank & Trust Co.*, 76 Mont. 445, 247 Pac. 336.

Where the contract under which a bank delivered negotiable paper as security for a debt due the pledgee which was thereafter sold by the latter contrary to the provisions of this section was not

put in evidence in a proceeding against the receiver of the pledgor bank by the purchaser to have his claim against the bank allowed, it will be presumed that the contract was not in contravention of the statute. *State v. American Bank & Trust Co.*, 76 Mont. 445, 247 Pac. 336.

Constructive delivery of accounts by a debtor to a creditor for the purpose of collection is sufficient to satisfy the rule that a pledge is dependent upon possession of the thing pledged. *Savage Tire Sales Co. v. Stuart et al.*, 61 Mont. 524, 203 Pac. 364.

Cited in *State ex rel. Rankin v. Yellowstone Bank etc. Co.*, 75 Mont. 43, 47, 243 Pac. 813.

For text treatment of this subject see vol. 18 Cal. Jur. 102; vol. 21 Cal. Jur. 333, 362.

8314. Surplus to be paid to pledgor.

Cited in *State v. American Bank & Trust Co.*, 76 Mont. 445, 449, 247 Pac. 336.

CHAPTER 91.

MECHANICS' LIENS.

8339. Who entitled to lien. Every mechanic, miner, machinist, architect, foreman, engineer, builder, lumberman, artisan, workman, laborer, and any other person, performing any work and labor upon or furnishing any material, machinery or fixture for, any building, structure, bridge, flume, canal, ditch, aqueduct, mining claim, coal mine, quartz lode, tunnel, city or town lot, farm, ranch, fence, railroad, telegraph, telephone, electric light, gas, or water works or plant, or any improvements, upon complying with the provisions of this chapter, for his work or labor done, or material, machinery or fixtures furnished, has a lien upon the property upon which the work or labor is done or material is furnished.

Amd. Sec. 1, Ch. 23, L. 1925.

For discussion of sufficiency of items in a lien statement, and validity of lien for work done after the date of the account, see *McAboy v. Junk*, 68 Mont. 198, 216 Pac. 1111.

Under the rule of *noscitur a sociis*, a threshing-machine is not a "structure" within the meaning of this section, providing for mechanics' and materialmen's liens on any "building, structure, flume," etc., but a structure to be lienable must, at the time labor is performed upon or

materials are used in connection with its creation, improvement or repair upon it, be attached to land. *Barnes v. Montana Lumber etc. Co.*, 67 Mont. 481, 216 Pac. 335.

Mechanic's lien for building erected by licensee, note, 45 A. L. R. 581.

Material specifically fabricated for and adapted to building, but not used therein, note, 33 A. L. R. 320.

For text treatment of this subject see vol. 17 Cal. Jur. 22, 28.

8340. How lien perfected.

A verification to a mechanic's lien to the effect that affiant, after deposing directly and positively that he had read the claim for lien and knew its contents, that the matters and things therein stated were true "as he verily believes," was a sufficient compliance with the provisions of this section and not void as having been made on information and belief. *Gregg v. Sigurdson et al.*, 67 Mont. 272, 215 Pac. 663.

Where an order for machinery to be shipped f. o. b. their place of shipment is accepted by the seller and they are so shipped "net 30 days 2%-10," the bill of lading or invoice being sent to the buyer, the sale is complete as of the day of shipment and the machinery is "furnished" within the meaning of this section, requiring the filing of claim of lien within ninety days after the material or machinery has been furnished. *Richardson G. S. Co. v. Valier Elevator Co.*, 67 Mont. 227, 215 Pac. 237.

The requirement of this section that a mechanic's lien must be verified as a "just and true account of the amount due, after allowing all credits," etc., held to have been met by a certification that the notice of lien and statement of account was true; that the statement contained a full and true amount due the lienor,

etc., after allowing all credits and offsets, signed by one of two partners and sworn to before a notary public. *Leigland v. Rundle L. & A. Co.*, 64 Mont. 154, 208 Pac. 1075.

A substantial, rather than a technical, view should be taken of the question whether a materialman's lien is founded upon one or more divisible contracts or involves one or more accounts. *Rogers-Templeton Lumber Co. v. Welch*, 63 Mont. 287, 208 Pac. 600.

The mechanic's lien statute is remedial in its nature, and to effectuate the purpose of its enactment after the lien has once attached, it should be given a liberal construction. *Rogers-Templeton Lumber Co. v. Welch*, 63 Mont. 287, 208 Pac. 600.

In an action to foreclose a materialman's lien, the plaintiff must prove, not only that the materials were furnished, but also that they were used in the construction of the building sought to be charged. *Pittsburgh Plate Glass Co. v. Culbertson Hotel Co. et al.*, 62 Mont. 605, 205 Pac. 957.

In an action to foreclose a materialman's lien, the plaintiff must prove not only that the materials were furnished, but also that they were used in the construction of the building sought to be charged. *Pittsburgh Plate Glass Co. v.*

Culbertson Hotel Co., 62 Mont. 605, 205 Pac. 957.

Under this section where title to the land on which a building was constructed with material furnished by plaintiff is not in the lienee, the lien extends to the building only, and in such a case any error or mistake in the description of the land

in the notice of lien does not affect the validity of the lien if the "property"; i. e., the building, can be identified. *Midland C. & L. Co. v. Ferguson et al.*, 61 Mont. 402, 202 Pac. 389.

For text treatment of this subject see vol. 17 Cal. Jur. 105 et seq.

8342. What property affected.

Under this section, while a mechanic's or materialman's lien extends primarily to the building, if the land upon which it is erected "belongs" to, i. e., is the property of, the person who causes the building to be constructed, the lien extends also to the land; but if the owner of the building loses title to the land, or if it is encumbered when work commences under the building contract, then the lien attaches to the building only. *Louis v. Theatorium Co. et al.*, 69 Mont. 50, 222 Pac. 1062.

Where title to the land and buildings erected thereon is in the person who caused the building to be constructed, and after commencement of the work of construction, a mortgage is given on the land, the mortgage is inferior to a mechanic's lien for work done or materials furnished in the construction of the building. *Louis v. Theatorium Co. et al.*, 69 Mont. 50, 222 Pac. 1062.

The fact that a materialman who has a lien on a building only also claims a lien on land which he cannot subject thereto will not defeat his lien on the building. *Morrow v. Dahl et al.*, 66 Mont. 251, 213 Pac. 602.

A person selling materials to be used in the erection or remodeling of a building has a lien on the building independently of the land on which the same may be situate and it is therefore immaterial to the validity of the lien that the purchaser did not have title to the land. *Morrow v. Dahl et al.*, 66 Mont. 251, 213 Pac. 602.

This and section 8344 were cited as sections 7293-7295, Revised Codes, in *Midland C. & L. Co. v. Ferguson et al.*, 61 Mont. 402, 405, 407, 202 Pac. 389.

For text treatment of this subject see vol. 17 Cal. Jur. 153, 155.

8343. Leasehold interest—How affected.

A heating plant and connecting pipes installed in a greenhouse constructed by a mechanic's lien claimant were fixtures and subject to removal as a part of the structure caused to be erected by a lessee of the land, the lien under this section extending in such a case to the entire

building and improvements added by the lessee to the lessor's land. Cited in *Bartholomew v. James et al.*, 76 Mont. 359, 246 Pac. 771.

Cited in *Louis v. Theatorium Co. et al.*, 69 Mont. 50, 56, 222 Pac. 1062.

8344. Priority of lien over mortgage.

Cited in *Louis v. Theatorium Co. et al.*, 69 Mont. 50, 55, 222 Pac. 1062.

CHAPTER 92.

LIENS FOR SALARIES AND WAGES.

8351. Preferred creditors when assignment of property is made.

After a wage-earner has once established his right to preference payment for wages earned within the period of sixty days immediately preceding a levy upon the property of his employer, by giving the notice provided for by the *Wageworkers' Law* he may assign his claim; the assignment carries with it the

lien as an incident, and the assignee is therefore entitled to bring suit thereon. *Thompson v. Twodot Fertilizer Co. et al.*, 71 Mont. 486, 230 Pac. 588.

For text treatment of this subject see vol. 3 Cal. Jur. 323.

8355. Service of notice.

Sections 8355, 8356, 8357, were cited in *Thompson v. Twodot Fertilizer Co. et al.*, 71 Mont. 486, 491, 230 Pac. 588.

CHAPTER 93.

LIENS UPON CROPS FOR SEED GRAIN AND HAIL INSURANCE.

8359. Lien upon crops for seed or for funds to purchase seed.

In view of this section, providing that a corporation may perfect a seed lien, the statute, however, not specifying the manner in which the statement of lien shall be verified nor by whom in the event the claimant is a corporation, and in view of the fact that a corporation can only act through its officers, an affidavit attached to such a lien claim signed "First National Bank of Savage" by its president and cashier was sufficient. *Thedin et al. v. First Nat. Bank of Savage*, 67 Mont. 65, 214 Pac. 956.

8360. Filing statement of lien in office of county clerk and recorder.

Cited in *Thedin et al. v. First Nat. Bank of Savage*, 67 Mont. 65, 70, 214 Pac. 956.

8361. Priority of lien.

Cited in *Thedin et al. v. First Nat. Bank of Savage*, 67 Mont. 65, 69, 214 Pac. 956.

CHAPTER 94.

THRESHERMEN'S LIENS.

8370. Limitation of actions to foreclose threshermen's liens. All actions for the foreclosure and enforcement of the lien herein provided for must be commenced within six months from the filing of the lien.

Amd. Sec. 1, Ch. 28, L. 1923.

CHAPTER 95.

LIENS ON OIL AND GAS WELLS AND PIPE-LINES.

8375. Liens for labor and material for oil and gas wells and pipe-lines. Any person, corporation, or copartnership who shall under contract, expressed or implied, with the owner of any leasehold for oil and gas purposes, or the owner of any gas pipe or oil pipe-line, or with the trustee or agent of such owner, who shall perform labor or furnish material, machinery, and oil well supplies used in the digging, drilling, torpedoing, completing, operating, or repairing of any oil or gas well, or who shall furnish any oil well supplies, or perform any labor in constructing or putting together any of the machinery used in drilling, torpedoing, operating, completing or repairing any gas well, shall have a lien upon all of the right, title and interest of such owner in and to the whole of such leasehold or oil pipe-line or gas pipe-line, or lease for oil and gas purposes, the building, and appurtenances, and upon the material and supplies so furnished, and upon all of the right, title and interest of such owner in and to said oil and gas well for which they were furnished, and upon all of the right, title and interest of such owner in and to all other oil wells, fixtures, and appliances used in the operating for oil and gas purposes upon the leasehold for which said material and supplies were furnished and labor performed.

Amd. Sec. 1, Ch. 152, L. 1923.

Casings of oil or gas well as subject to mechanic's lien, note, 39 A. L. R. 1260.

8377. Enforcement and filing of liens—Limitations. The liens herein created shall be enforced in the same manner, and the notice of same shall be given in the same manner, and the materialman's statement, or the lien of any laborer herein mentioned, shall be filed in the same manner as now provided by the laws of Montana for materialmen's and mechanics' liens, except that the time within which such liens must be filed shall be six months instead of ninety days; and the method of procedure provided by the laws of the state of Montana for enforcing of materialmen's and mechanics' liens shall govern the enforcement thereof.

Amd. Sec. 2, Ch. 152, L. 1923.

CHAPTER 96.

MISCELLANEOUS LIENS.

8378. Lien of seller of real property.

This section, providing for a vendor's lien for so much of the purchase price of real property as remains unpaid and unsecured, has no application to an executory contract of sale under which the vendor retains title in himself until the purchase price is fully paid. *Smith v. Bunston*, 72 Mont. 535, 234 Pac. 836.

For definition of a "vendor's lien" and discussion of circumstances constituting a waiver of same, see *Digen v. Schultz*, 65 Mont. 190, 210 Pac. 1057.

For text treatment of this subject see vol. 25 Cal. Jur. 739.

8383. Agister's liens and liens of service—Priority.

This section, according a lien to a ranchman, farmer or herder, for keeping, feeding or pasturing livestock, applies only to one entrusted with the care, custody and control of animals under a contract of bailment, and under it a lien is not given to an employee, or a herder, on the livestock of his employer for wages

due for herding them. *Love v. Hecker et al.*, 67 Mont. 497, 215 Pac. 1099.

For text treatment of this subject see vol. 16 Cal. Jur. 303; vol. 2 Cal. Jur. 22.

Priority of lien for storage of automobile, note, 31 A. L. R. 837.

8385. Procedure to enforce lien—Sale. If payment for such work, labor, feed, or services, or material furnished, is not made within thirty (30) days after the performance or furnishing of the same, the person entitled to a lien under the provisions of this section may enforce said lien in the following manner: He shall deliver to the sheriff or a constable of the county in which the property aforesaid is located a statement of the amount of his claim against said property, a description of the property, and the name of the owner thereof, or of the person at whose request the work, labor, or services were performed, or the materials furnished. Upon receipt of such statement, the sheriff or constable shall proceed to advertise and sell at public auction so much of the property covered by said lien as will satisfy same. Such sale shall be advertised, conducted, and held in the same manner as provided by law for the sale of mortgaged personal property by sheriffs. Such notice shall be given for not less than five (5) nor more than ten (10) days prior to the date of sale. The proceeds of the sale shall be applied by the sheriff to the discharge of the lien and the costs of the proceedings in selling the property and enforcing the lien, and the remainder, if any, or such part as is required to discharge the claims, shall be turned over by the sheriff to the holders, in the order of their precedence, of the chattel mortgages or

other lien claimants of record against said property, and the balance of the proceeds shall be turned over to the owner of the property. Providing, however, that before making seizure of any property under the provisions of this section, the sheriff may require an indemnity bond from the lienor in not to exceed double the amount of the claim against said property, said bond and the surety or sureties thereon to be approved by said sheriff.

Amd. Sec. 1, Ch. 130, L. 1927.

CHAPTER 98.

GENERAL PROVISIONS.

8401. Short title.

The Uniform Negotiable Instruments Act (secs. 8401-8596) supersedes the law of suretyship (secs. 8195-8208) as theretofore applicable to negotiable instruments, and therefore one who signed a note as maker bound himself absolutely to pay, though in fact but an accommodation maker, and could not escape liability to a holder in due course under a plea

of having been a surety only. *Merchants' Nat. Bank v. Smith et al.*, 59 Mont. 280, 15 A. L. R. 430, 196 Pac. 523.

Cited in *Grosfield v. First Nat. Bank*, 73 Mont. 219, 233, 236 Pac. 250.

For text treatment of this subject see vol. 19 Cal. Jur. 794.

8402. Definitions and meaning of terms.

The mere possession of a promissory note by a foreign administrator, made payable to the order and transferred to his intestate but never indorsed, does not constitute him a holder thereof within the meaning of the Negotiable Instruments Law, and he is therefore not entitled to maintain an action thereon in his individual capacity but may main-

tain it only in his representative capacity after taking out ancillary letters. *Lefebure et al. v. Baker et al.*, 69 Mont. 193, 220 Pac. 1111.

This and section 8403 were cited as sections 5843 and 5844, Revised Codes, in *Merchants' Nat. Bank v. Smith et al.*, 59 Mont. 280, 290, 291, 15 A. L. R. 430, 196 Pac. 523.

8403. Person primarily liable on instrument.

Defendant, an accommodation maker, was primarily liable on the note, though the bank, at the time it took the instrument, knew that he was lending his name to his comaker, and was not discharged from liability by the act of the bank in releasing mortgage security furnished by the latter without his (defendant's) knowledge or consent. *Merchants' Nat.*

Bank of Billings v. Smith et al., 59 Mont. 280, 15 A. L. R. 430, 196 Pac. 523.

Cited in *Anderson v. Border et al.*, 75 Mont. 516, 526, 244 Pac. 494.

Cited in *Mulany v. Murray*, 68 Mont. 245, 251, 216 Pac. 1105.

For text treatment of this subject see vol. 19 Cal. Jur. 872.

CHAPTER 99.

FORM AND INTERPRETATION.

8408. Form of negotiable instrument.

Cited in *Grosfield v. First Nat. Bank*, 73 Mont. 219, 233, 236 Pac. 250; *Wood v. Ferguson et al.*, 71 Mont. 540, 550, 230 Pac. 592; *Great Falls Nat. Bank v. Young et al.*, 67 Mont. 328, 335, 215 Pac. 651.

Validity and effect of note payable to maker without words of negotiability, notes, 42 A. L. R. 1067; 50 A. L. R. 426.

Negotiability of instrument payable in "current funds," "currency," etc., note, 36 A. L. R. 1358.

Acceleration provision as affecting negotiability, note, 34 A. L. R. 872.

Place of maker's signature on bill or note, note, 20 A. L. R. 394.

Negotiability of instrument as affected

by incompleteness of the attempt to fix due date, note, 19 A. L. R. 508.

For text treatment of this subject see vol. 19 Cal. Jur. 808.

8409. Certainty as to sum, what constitutes.

The words "attorney's fee" and "costs of collection" as used in a promissory note containing a provision for the payment of an attorney's fee and costs of collection mean the same thing, so that the use of both of them in the conjunctive imposed no greater burden on the maker than would their use in the disjunctive have done and did not render

the note non-negotiable. *Wood v. Ferguson et al.*, 71 Mont. 540, 230 Pac. 592.

Negotiability as affected by provision in relation to discount or interest, note, 51 A. L. R. 294.

For text treatment of this subject see vol. 19 Cal. Jur. 809.

8411. Determinable future time, what constitutes.

Cited in *Great Falls Nat. Bank v. Young et al.*, 67 Mont. 328, 335, 215 Pac. 651.

8412. Additional provisions not affecting negotiability. An instrument which contains an order or promise to do any act in addition to the payment of money is not negotiable. But the negotiable character of an instrument otherwise negotiable is not affected by a provision which:

1. Authorizes the sale of collateral securities in case the instrument be not paid at maturity; or,

2. Authorizes a confession of judgment if the instrument be not paid at maturity; or,

3. Waives the benefit of any law intended for the advantage or protection of the obligor; or,

4. Gives the holder an election to require something to be done in lieu of payment of money.

5. An instrument otherwise negotiable in character is not affected by the fact that it was at the time of the execution or subsequently secured by mortgage on real or personal property.

But nothing in this section shall validate any provision or stipulation otherwise illegal.

Amd. Sec. 1, Ch. 143, L. 1923.

Negotiability of note as affected by provision therein, or in mortgage securing the same, for payment of taxes, as-

sessments or insurance, note, 45 A. L. R. 1074.

For text treatment of this subject see vol. 19 Cal. Jur. 817.

8421. Blanks—When may be filled.

Cited in *Burnett v. Burnett*, 68 Mont. 546, 548, 219 Pac. 831.

Cited as section 5862, Revised Codes,

in *Merchants' Nat. Bank v. Smith et al.*, 59 Mont. 280, 294, 15 A. L. R. 430, 196 Pac. 523.

8423. Delivery—When effectual—When presumed.

Under this section delivery of a promissory note, in order to be effectual, must be made by or under the authority of the maker of the instrument, and therefore where no such delivery is shown the payee named therein cannot recover on it. *Baroch v. Greater Montana Oil Co.*, 70 Mont. 93, 225 Pac. 800.

Under this section, providing that where a negotiable instrument is no longer in the possession of a party whose signature

appears thereon a valid and intentional delivery by him is presumed, held, in an action on a promissory note, that its production by plaintiff raised a presumption of a valid and intentional delivery of it to the payee by the maker, and that it was properly admitted as against the objection that plaintiff was not the owner or holder thereof. *Ely, Salyards & Co. v. Farmers' E. Co.*, 69 Mont. 265, 221 Pac. 522.

Parol evidence to show conditional delivery of note, note, 20 A. L. R. 424.

For text treatment of this subject see vol. 19 Cal. Jur. 826, 1036.

8424. Construction where instrument is ambiguous.

Cited in Square Butte State Bank v. Ballard, 64 Mont. 554, 559, 210 Pac. 889.

8425. Liability of person signing in trade or assumed name.

Cited as section 5866, Revised Codes, in Larson v. Marcy et al., 61 Mont. 1, 7, 201 Pac. 685.

8426. Signature by agent—Authority—How shown.

Under this section, the signature of any party to a negotiable instrument may be made by a duly authorized agent. Commercial Nat. Bank of Great Falls v. Reichelt, 62 Mont. 302, 204 Pac. 1037.

Persons conducting business as a voluntary association, using a common or trade name, may be held jointly and

severally liable upon a note executed in the trade name by their agent authorized to do so. Larson v. Marcy et al., 61 Mont. 1, 201 Pac. 685.

For text treatment of this subject see vol. 19 Cal. Jur. 822.

8427. Liability of person signing as agent, etc.

Under this section the indorsement, "J. H. Irwin, Presdt. Great Northern Surety Co.," on a note made payable to the company was its indorsement and not that of the individual signer, the contention that the words following the name were merely descriptio personae and did not indicate the character in which

he acted not being maintainable under the Negotiable Instruments Law. Commercial Nat. Bank of Great Falls v. Reichelt, 62 Mont. 302, 204 Pac. 1037.

For text treatment of this subject see vol. 19 Cal. Jur. 824.

CHAPTER 100.

CONSIDERATION.

8431. Presumption of consideration.

Cited in Alley v. Butte & Western Mining Co., 77 Mont. 477, 487, 251 Pac. 517; Allen v. Montana Refining Co., 71 Mont.

105, 120, 227 Pac. 582; McConnell v. Blackley, 66 Mont. 510, 514, 214 Pac. 64.

8432. What constitutes value.

Cited in Schauer v. Morgan et al., 67 Mont. 455, 465, 216 Pac. 347; Hackney v. Birely, 67 Mont. 155, 162, 215 Pac. 642;

McConnell v. Blackley, 66 Mont. 510, 514, 214 Pac. 64; Mulany v. Murray, 68 Mont. 245, 252, 216 Pac. 1105.

8434. When lien on instrument constitutes holder for value.

Cited in State v. American Bank & Trust Co., 76 Mont. 445, 449, 247 Pac.

336; Union Bank & Trust Co. v. Lynn, 73 Mont. 473, 476, 237 Pac. 490.

8435. Effect of want of consideration.

Cited in United States Nat. Bank v. Chappell, 71 Mont. 553, 563, 230 Pac. 1084.

8436. Liability of accommodation indorser.

Where defendant signed a renewal note taking the place of a note signed by her husband and another, at the request of the husband for the purpose of lending her name to him as comaker, she was an

accommodation maker within the meaning of this section, and not a guarantor, and liable as such to a holder for value though the latter knew her to be only an accommodation maker and that no consideration

moved to her for signing it, the consideration moving to one or both of her co-makers having been sufficient to uphold the note. *Mulany v. Murray*, 68 Mont. 245, 216 Pac. 1105.

Cited in *Anderson v. Border et al.*, 75 Mont. 516, 526, 244 Pac. 494; as section 5877, Revised Codes, in *Merchants' Nat. Bank v. Smith et al.*, 59 Mont. 280, 291, 15 A. L. R. 430, 196 Pac. 523.

Parol evidence to explain accommodation indorsement, note, 35 A. L. R. 1121.

Bank's liability to innocent holder on officer's or employee's indorsement of paper for accommodation of third party, note, 37 A. L. R. 1376.

For text treatment of this subject see vol. 19 Cal. Jur. 881.

CHAPTER 101.

NEGOTIATION.

8437. What constitutes negotiation.

Cited as section 5878, Revised Codes, 59 Mont. 280, 296, 15 A. L. R. 430, 196 Pac. 523.

8448. Indorser where payable to two or more persons.

Cited in *Swords v. Occident Elevator Co.*, 72 Mont. 189, 197, 232 Pac. 189.

CHAPTER 102.

RIGHTS OF HOLDER.

8458. Right of holder to sue—Payment.

Cited in *Lefebure et al. v. Baker et al.*, 69 Mont. 193, 204, 220 Pac. 1111.

8459. What constitutes a holder in due course.

Bank held to be a holder in due course on the facts involved in *Fleming v. Consolidated M. S. Co.*, 74 Mont. 245, 240 Pac. 376.

To defeat the claim of ownership of coupon Liberty bonds, negotiable in character, asserted by plaintiff in his action for their conversion, it was incumbent upon defendant bank to show that it was a holder in due course, under this and sections 8465 and 8466. *Grosfield v. First Nat. Bank*, 73 Mont. 219, 236 Pac. 250.

A holder of a promissory note who bought it before maturity in good faith paying full value therefor, without actual knowledge or notice that it was secured by a mortgage, or of the assignment of the note containing a provision that it was being transferred without recourse, was a holder in due course within the meaning of this section. *Wood v. Ferguson et al.*, 71 Mont. 540, 230 Pac. 592.

Cited in *Anderson v. Border et al.*, 75 Mont. 516, 529, 244 Pac. 494; *Newer v. First Nat. Bank of Harlem*, 74 Mont. 549, 555, 241 Pac. 613; *Union Bank & Trust Co. v. Lynn*, 73 Mont. 473, 476, 237 Pac. 490; *Matteson v. Trask*, 63 Mont. 160, 206 Pac. 428; as section 5900, Revised Codes, in *Merchants' Nat. Bank v. Smith et al.*, 59 Mont. 280, 292, 15 A. L. R. 430, 196 Pac. 523.

note as affected by fact that there is interest due and unpaid upon it, notes, 11 A. L. R. 1277; 40 A. L. R. 832.

Memoranda or notations on paper as affecting one's character as a holder in due course, note, 34 A. L. R. 1377.

Necessity of indorsement by all payees before maturity to make a transferee a bona fide holder, note, 25 A. L. R. 163.

Payee as holder in due course under Negotiable Instruments Law, notes, 15 A. L. R. 437; 21 A. L. R. 1365; 26 A. L. R. 769; 32 A. L. R. 289.

One taking bill or note as gift, or in consideration of love and affection, as a holder for value or in due course, protected against defenses between prior parties, note, 48 A. L. R. 237.

Attachment of paper indicating origin or consideration as affecting bona fides of holder, note, 38 A. L. R. 351.

Absence of revenue stamps as affecting bona fides of purchaser, notes, 6 A. L. R. 1701; 21 A. L. R. 1125.

Crediting the proceeds of negotiable paper to holder's deposit account as constituting bank a holder in due course, notes, 6 A. L. R. 252; 24 A. L. R. 901.

Memoranda or notations on paper as affecting one's character as a holder in due course, note, 34 A. L. R. 1377.

Attachment of paper indicating origin or consideration as affecting bona fides of holder, note, 38 A. L. R. 351.

For text treatment of this subject see vol. 19 Cal. Jur. 856.

Bona fides of purchaser of promissory

8464. Rights of holder in due course.

Cited in *Wood v. Ferguson et al.*, 71 Mont. 540, 550, 230 Pac. 592.

8465. When subject to original defenses.

Applied with section 8459 in *Grosfield v. First Nat. Bank*, 73 Mont. 219, 236 Pac. 250.

This and section 8466 were cited as

sections 5906 and 5907, Revised Codes, in *Merchants' Nat. Bank v. Smith et al.*, 59 Mont. 280, 293, 15 A. L. R. 430, 196 Pac. 523.

8466. Who deemed holder in due course.

Under this section, where, after plaintiff indorsee had made out a prima facie case, defendant (drawer) produced evidence tending fairly to prove that the payee had obtained the check through fraud, the burden shifted to plaintiff to prove every fact necessary to show that he was a holder in due course, among them; that he took it in good faith and for value, failing in which he was not entitled to recover. *Matteson v. Trask*, 63 Mont. 160, 206 Pac. 428.

The payee of a negotiable promissory note in possession of it is a prima facie holder in due course within the meaning of the Uniform Negotiable Instruments

Act, negotiation by indorsement and delivery, not being necessary to constitute one a holder in due course. *Merchants' Nat. Bank of Billings v. Smith et al.*, 59 Mont. 280, 15 A. L. R. 430, 196 Pac. 523.

Applied with section 8459 and 8465 in *Grosfield v. First Nat. Bank*, 73 Mont. 219, 236 Pac. 250.

Fraud in inception of bill or note as throwing upon subsequent holder burden of proving that he is holder in due course, notes, 18 A. L. R. 18; 34 A. L. R. 300.

For text treatment of this subject see vol. 19 Cal. Jur. 1038-1042.

CHAPTER 103.**LIABILITIES OF PARTIES.****8467. Liability of maker.**

By making a promissory note to a corporation, the maker admits the payee's corporate existence and its capacity to indorse. *Commercial Nat. Bank of Great*

Falls v. Reichelt, 62 Mont. 302, 204 Pac. 1037.

For text treatment of this subject see vol. 19 Cal. Jur. 873.

8468. Liability of drawer.

A first due presentment of a check for payment fixes the rights and liabilities of the parties and if when due presentment is made, the drawee bank is ready, able and willing to pay, and the holder permits the fund to remain longer in its hands, or accepts in lieu of money the

bank's draft on another bank, he does so at his own risk, and cannot extend the drawer's liability. *Jensen v. Laurel Meat Co.*, 71 Mont. 582, 230 Pac. 1081.

For text treatment of this subject see vol. 19 Cal. Jur. 874.

8470. When person deemed indorser.

In the absence of a special agreement to that effect, one who signs his name on the back of a non-negotiable note is not an indorser in the sense that term is used in the Negotiable Instruments Law; hence an instruction in the language of this section, that a person who places his signature upon an instrument otherwise than as maker, drawer or acceptor is deemed to be an indorser, was inapplicable in an action on such a note. *Newer*

v. First Nat. Bank of Harlem, 74 Mont. 549, 241 Pac. 613.

Cited in *Anderson v. Border et al.*, 75 Mont. 516, 525, 244 Pac. 494; *Wood v. Ferguson et al.*, 71 Mont. 540, 551, 230 Pac. 592; *Square Butte State Bank v. Ballard*, 64 Mont. 554, 559, 210 Pac. 889.

For text treatment of this subject see vol. 19 Cal. Jur. 880.

8471. Liability of irregular indorser.

This section, with reference to the liability of irregular or accommodation indorsers, has no application where a party places his indorsement on a promissory note after its delivery to the payee unless he does so pursuant to an agreement or understanding had prior to delivery that the indorsement should relate back and be considered as having been made be-

fore delivery; in the absence of such an agreement the indorsement constitutes a contract of guaranty rather than one of surety. *Anderson v. Border et al.*, 75 Mont. 516, 244 Pac. 494.

For text treatment of this subject see vol. 19 Cal. Jur. 880.

8472. Warranty—Where negotiation by delivery, etc.

For statement of the warranties made by an unqualified indorser of a promissory note, see *Wood v. Ferguson et al.*, 71 Mont. 540, 230 Pac. 592.

Sections 8472, 8473 were cited in *Wood v. Ferguson et al.*, 71 Mont. 540, 551, 230 Pac. 592.

8473. Liability of general indorser.

Cited in *Newer v. First Nat. Bank of Harlem*, 74 Mont. 549, 555, 556, 241 Pac. 613.

8475. Order in which indorsers are liable.

Cited in *Anderson v. Border et al.*, 75 Mont. 516, 526, 244 Pac. 494.

CHAPTER 104.

PRESENTMENT FOR PAYMENT.

8477. Effect of want of demand on principal debtor.

Cited in *Morgan v. Huffman*, 76 Mont. 396, 402, 247 Pac. 326.

8489. What presentment may be dispensed with.

Cited in *Wood v. Ferguson et al.*, 71 Mont. 540, 551, 230 Pac. 592.

CHAPTER 105.

NOTICE OF DISHONOR.

8496. To whom notice of dishonor must be given.

Cited in *Morgan v. Huffman*, 76 Mont. 396, 402, 247 Pac. 326.

8516. Waiver of notice.

Sections 8516, 8517, were cited in *Wood v. Ferguson et al.*, 71 Mont. 540, 551, 230 Pac. 592.

8525. When protest need not be made.

Cited in *Wood v. Ferguson et al.*, 71 Mont. 540, 551, 230 Pac. 592.

CHAPTER 106.

DISCHARGE OF NEGOTIABLE INSTRUMENTS.

8526. Instrument—How discharged.

Cited in *Equity Co-operative Assn. v. Merchants' Nat. Bank v. Smith et al.*, Milling Co., 63 Mont. 26, 36, 206 Pac. 59 Mont. 280, 291, 15 A. L. R. 430, 196 Pac. 523.

8527. When person secondarily liable on, discharged.

The defense that an extension of time has been granted to the principal debtor on a negotiable note without the consent of the surety is under the Negotiable Instruments Act, available only to one secondarily liable thereon. *Merchants' Nat. Bank of Billings v. Smith et al.*, 59 Mont. 280, 15 A. L. R. 430, 196 Pac. 523.

Indorsing payment upon note before maturity as releasing indorser, note, 37 A. L. R. 477.

Demand note taken in renewal as releasing indorser, note, 48 A. L. R. 1222.

For text treatment of this subject see vol. 19 Cal. Jur. 928.

8529. Renunciation by holder.

This section, providing that the holder of a promissory note may in writing renounce his rights under it, held inapplicable to an action by the payee against the maker where the contract under which it was given was rescinded by

mutual consent. *Hollingsworth v. Ruckman*, 72 Mont. 147, 232 Pac. 180.

For text treatment of this subject see vol. 19 Cal. Jur. 930.

CHAPTER 107.**BILLS OF EXCHANGE—FORM AND INTERPRETATION.****8534. Bill not an assignment of funds in hands of drawee.**

Cited in *Stankey v. Citizens' Nat. Bank of Laurel*, 64 Mont. 309, 315, 209 Pac. 1054.

CHAPTER 114.**PROMISSORY NOTES AND CHECKS.****8591. Promissory note defined.**

Cited in *Wood v. Ferguson et al.*, 71 Mont. 540, 550, 230 Pac. 592; *Great Falls*

Nat. Bank v. Young et al., 67 Mont. 328, 334, 215 Pac. 651.

8593. Within what time a check must be presented.

Where the board of county commissioners had wrongfully refused to issue an order for the payment of a warrant not re-presented for payment until after the sixty-day period provided for in section 4758, had expired, and thereafter the bank in which its funds were deposited became insolvent, the county was not discharged from liability thereon under this section by the holder's neglect to make timely demand for payment, since the

detriment suffered by it was traceable to its improper refusal and not to the holder's failure to act. *State ex rel. Case v. Bolles et al.*, 74 Mont. 54, 238 Pac. 586.

Stopping payment as affecting necessity for presentation of check, note, 14 A. L. R. 562.

For text treatment of this subject see vol. 19 Cal. Jur. 949.

8593.1. Time limit for presentation of check. Where a check or other instrument payable on demand at any bank or trust company doing business in this state is presented more than one year from its date, such bank or trust company may, unless expressly instructed by the drawer or maker to pay the same, refuse payment thereof and no liability shall thereby be incurred to the drawer or maker for dishonoring the instrument by nonpayment.

En. Sec. 1, Ch. 106, L. 1923.

8596. When check operates as an assignment.

Under the Negotiable Instruments Law, the giving of a check is not an assignment pro tanto of the drawer's deposit so as to give the holder a right of action against the bank in case payment is refused, liability not attaching until the

bank has accepted or certified the check. *Stankey v. Citizens' National Bank of Laurel*, 64 Mont. 309, 209 Pac. 1054.

For text treatment of this subject see vol. 19 Cal. Jur. 935.

PART VI.**Relations of Debtor and Creditor—Nuisance and Relief.****CHAPTER 1.****DEFINITIONS AND GENERAL PRINCIPLES.****8598. Who is a debtor.**

Where the owner of city lots had sold them with the understanding that she was to remove a building thereon within a given time and removal thereof was prevented by litigation for several years, during which time the purchaser was adjudged to be entitled to ground rental which remained unpaid, she knew that she was indebted to the purchaser in an amount which was constantly increasing, and therefore was a debtor within the meaning of this section, at the time

she transferred practically all of her property to her daughter. *Security State Bank v. McIntyre*, 71 Mont. 186, 228 Pac. 618.

Cited in *State v. McGraw*, 74 Mont. 152, 163, 240 Pac. 812.

This and section 8599 were cited in *Harrison v. Riddell et al.*, 64 Mont. 466, 478, 210 Pac. 460.

For text treatment of this subject see vol. 8 Cal. Jur. 1050.

8599. Who is a creditor.

Cited in *Security State Bank v. McIntyre*, 71 Mont. 186, 195, 228 Pac. 618.

8600. Contracts of debtor are valid.

Cited in *Harrison v. Riddell et al.*, 64 Mont. 466, 478, 210 Pac. 460.

8601. Payments in preference.

The rule declared by this section, that a debtor may pay one creditor in preference to another, provided that other be not a preferred creditor, applies to an insolvent debtor as well as to solvent one, and under it an insolvent debtor may transfer property in payment of a debt justly due though he knows that the effect of the transaction will be to defeat another in the collection of his debt.

Hale et al. v. Belgrade Co., Ltd., 75 Mont. 99, 242 Pac. 425.

Cited in *Security State Bank v. McIntyre*, 71 Mont. 186, 204, 228 Pac. 618; *Harrison v. Riddell et al.*, 64 Mont. 466, 478, 210 Pac. 460.

For text treatment of this subject see vol. 8 Cal. Jur. 1055.

CHAPTER 2.**FRAUDULENT INSTRUMENTS AND TRANSFERS.****8603. Transfers, etc., with intent to defraud creditors.**

Under this section, and 8605 and 8606, a creditor seeking to set aside a transfer as fraudulent must allege and prove that the debtor was insolvent at the time he made the conveyance and that

he had no other property out of which his claim could be satisfied or enforced by legal process. *Hale et al. v. Belgrade Co., Ltd.*, 75 Mont. 99, 242 Pac. 425.

Generally the only means by which to

ascertain whether an intent to defraud existed at the time of the transfer complained of is by considering the acts of the parties which experience has demonstrated to have fraudulent aspects, denominated "badges of fraud," such as insolvency, inadequacy of consideration, etc. *Security Bank v. McIntyre*, 71 Mont. 186, 228 Pac. 618.

Cited in *Wray v. Great Falls Paper Co.*, 72 Mont. 461, 470, 234 Pac. 486.

Sections 8603, 8604 were cited in

Security State Bank v. McIntyre, 71 Mont. 186, 196, 228 Pac. 618; as section 6127, Revised Codes, in *Williams v. Gray*, 62 Mont. 1, 12, 203 Pac. 524.

Applied with sections 8276 and 8606 in *Ignatius v. Farmers' State Bank of Havre*, 272 Fed. 33.

For text treatment of this subject see vol. 12 Cal. Jur. 956; vol. 17 Cal. Jur. 977.

8604. Certain transfers presumed fraudulent.

The mere fact that an automobile was sold by a father to his daughter on one day and not delivered until the next did not render the sale void as fraudulent, where delivery was impossible on the day of sale. *Tomcheck v. Maryland Casualty Co.*, 75 Mont. 557, 244 Pac. 506.

Where the evidence, in an action in conversion to recover on a sheriff's bond in which the defense was that the property seized by the officer had been sold by the judgment debtor with the intent to defraud the creditor, as to whether there was such an immediate delivery and continued change of possession as to satisfy the requirements of this section was conflicting, the question was one for the jury to determine. *Tomcheck v. Maryland Casualty Co.*, 75 Mont. 557, 244 Pac. 506.

The mere statement, "It is yours," made with reference to a quantity of grain by the transferor to the transferee in an attorney's office miles away from where the grain was stored, the transferee doing nothing whatever to take possession, which remained in the transferor, was

not such a delivery as is contemplated by this section, and therefore insufficient as against an attaching creditor of the transferor. *Wells et al. v. Esgar*, 72 Mont. 333, 233 Pac. 123.

In applying the statutory rule as to fraudulent transfers, consideration must be given to the situation of the parties at the time of the sale. *Puckett v. Hopkins et al.*, 63 Mont. 137, 206 Pac. 422.

While a mere temporary change of possession of personal property will not avail against the claim of a creditor of the vendor, the change need not necessarily continue until the property is seized by the creditor, but if the change was open and so long continued as to indicate to the world at large that there has been a transfer of title, it is sufficient. *Puckett v. Hopkins et al.*, 63 Mont. 137, 206 Pac. 422.

Cited as section 6128, Revised Codes, in *First Nat. Bank v. Montana Emporium Co.*, 59 Mont. 584, 593, 197 Pac. 994.

For text treatment of this subject see vol. 12 Cal. Jur. 992.

8605. Creditor's right must be judicially ascertained.

Sections 8605, 8606, were applied with section 8603 in *Hale et al. v. Belgrade Co., Ltd.*, 75 Mont. 99, 242 Pac. 425.

8606. Question of fraud—How determined.

Cited in *Security State Bank v. McIntyre*, 71 Mont. 186, 196, 228 Pac. 618.
Applied with sections 8276 and 8603 in

Ignatius v. Farmers' State Bank of Havre, 272 Fed. 33.

CHAPTER 3.

BULK SALES.

8607. Sale of merchandise in bulk—Seller to furnish list of creditors.

The Bulk Sales Act applies only to claims arising ex contractu, and not to unliquidated claims ex delicto, such as a claim for damages for a personal injury. *Harrison v. Riddell et al.*, 64 Mont. 466, 210 Pac. 460.

Sale of entire stock of branch or department of business as within Bulk Sales Law, note, 33 A. L. R. 62.

Applicability of Bulk Sales Law to chattel mortgages and sales thereunder, notes, 9 A. L. R. 473; 14 A. L. R. 753.

Sale to one already having interest in property as within Bulk Sales Law, note, 51 A. L. R. 403. For text treatment of this subject see vol. 12 Cal. Jur. 971.

8608. Sale without statement fraudulent and void.

Cited in *Harrison v. Riddell et al.*, 64 Mont. 466, 476, 210 Pac. 460.

8610. What constitutes a sale and transfer within the meaning of this chapter.

Cited in *Harrison v. Riddell et al.*, 64 Mont. 466, 476, 210 Pac. 460.

CHAPTER 4.

ASSIGNMENTS FOR BENEFIT OF CREDITORS.

8612. When debtor may execute assignment.

Under sections 8612 to 8641, whereby a complete procedure for the administration and settlement of estates assigned for the benefit of creditors is provided, the district court of the county in which an assignment is made has exclusive jurisdiction, both in cases at law and in equity, arising out of the assignment and relating to the distribution of the assets of the estate, and therefore an action against an assignee to establish a claim against the estate in his charge in a

county other than that in which the assignment proceedings were pending was properly dismissed for lack of jurisdiction. *Stanton Trust & Savings Bank v. Northern Mont. Assn., etc.*, 77 Mont. 153, 250 Pac. 596.

Sections 8612-8641 were cited in *State ex rel. Marshall-Wells Co. v. District Court*, 74 Mont. 34, 36, 237 Pac. 523.

For text treatment of this subject see vol. 3 Cal. Jur. 314.

8626. Recording assignment and filing inventory.

Cited in *Stanton Bank v. Northern Mont. Assn. etc.*, 77 Mont. 153, 159, 250 Pac. 596.

8630. Bond of assignees.

Sections 8630, 8632, 8633 were cited in *Stanton Bank v. Northern Mont. Assn., etc.*, 77 Mont. 153, 159, 250 Pac. 596;

State ex rel. Marshall-Wells Co. v. District Court, 74 Mont. 34, 37, 237 Pac. 523.

8631. Conditions of disposal and conversion.

An assignment for the benefit of creditors is in effect a contract, and therefore where an assignment was made before the passage of this section as amended, giving the district court power under certain circumstances to permit the assignee to conduct the business of the assignor as a going concern, the act cannot be given a retroactive effect to impair the obligation of such contract. *Patrick & Co. v. McDonnell*, 61 Mont. 236, 201 Pac. 1009.

While under this section (before amend-

ment) the district court may, when necessary for best interests of the estate of an assignor, authorize his business to be conducted for a limited period of time, it may not do so for an unlimited period. *Patrick & Co. v. McDonnell*, 61 Mont. 236, 201 Pac. 1009.

Cited in *Stanton Bank v. Northern Mont. Assn., etc.*, 77 Mont. 153, 160, 250 Pac. 596.

For text treatment of this subject see vol. 3 Cal. Jur. 319.

8632. Notice to creditors to present claims.

The rule that where the time within which creditors must present their claims to an assignee is fixed by statute, the failure of a creditor to present his claim within that time bars him from his right to participate in dividends, is, in principle applicable where, as in this state, the

district judge may fix the time for such presentation. *State ex rel. Marshall-Wells Co. v. District Court*, 74 Mont. 34, 237 Pac. 523.

Applied with section 8635 in *State ex rel. Marshall-Wells Co. v. District Court*, 74 Mont. 34, 237 Pac. 523.

8634. Duties of assignee.

Sections 8634, 8635 were cited in *Stanton Bank v. Northern Mont. Assn., etc.*, 77 Mont. 153, 160, 250 Pac. 596; *State ex*

rel. Marshall-Wells Co. v. District Court, 74 Mont. 34, 37, 237 Pac. 523.

8635. Power of court.

Under this section, construed in conjunction with section 8632, the district court has power upon final settlement of the estate to direct the assignee to pay a lawful creditor his proportionate dividend though his claim was not presented within the time designated in the assignee's call, provided four months have not elapsed since the first publication of notice to creditors, and therefore, where a creditor did not present his claim until two years and two months after first publication of

notice, the court exceeded its power in allowing the claim. *State ex rel. Marshall-Wells Co. v. District Court*, 74 Mont. 34, 237 Pac. 523.

While under this section, the district court may, when necessary for the best interests of the estate of an assignor, authorize his business to be conducted for a limited period of time, it may not do so for an unlimited period. *Patrick & Co. v. McDonnell*, 61 Mont. 236, 201 Pac. 1009.

8636. Further security required.

Cited in *Stanton Bank v. Northern Mont. Assn. etc.*, 77 Mont. 153, 159, 250 Pac. 596.

8637. Accounting of assignee.

Cited in *Stanton Bank v. Northern Mont. Assn. etc.*, 77 Mont. 153, 160, 250 Pac. 596.

CHAPTER 5.**NUISANCE—REMEDIES AGAINST PUBLIC AND PRIVATE NUISANCES.****8642. Nuisance defined.**

Sections 8642-8656 were cited in *State ex rel. Lamey v. Young*, 72 Mont. 408, 416, 234 Pac. 248; *Jeffers v. Montana Power Co. et al.*, 68 Mont. 114, 137, 217

Pac. 652; *Lennon et al. v. City of Butte*, 67 Mont. 101, 214 Pac. 1101; *State ex rel. Bourquin v. Morris et al.*, 67 Mont. 40, 43, 214 Pac. 332.

8645. What is not deemed a nuisance.

In an action to enjoin the maintenance and operation of a storage reservoir used for generating electric power, on the ground that it constituted a nuisance in that during the winter months when water was released for power development purposes an unnatural fluctuation of several feet in the level of the river below resulted causing the ice to break and jam and plaintiff's property to be flooded, since the operation of the reservoir was authorized by law and under this section, nothing done or maintained under express authority of statute can be

deemed a nuisance, the complaint, in the absence of an allegation of negligence, did not state a cause of action. *Jeffers v. Montana Power Co. et al.*, 68 Mont. 114, 217 Pac. 652.

Cited in *Lennon et al. v. City of Butte*, 67 Mont. 101, 106, 214 Pac. 1101.

Manner of or circumstances attending performance of duty enjoined by law as creating nuisance, note, 38 A. L. R. 1437.

For text treatment of this subject see vol. 20 Cal. Jur. 286.

8653. How abated.

The right given a person by this section to abate a nuisance which is especially injurious to him, may be exercised only under those circumstances which necessity indulges in cases of extremity or great emergency wherein the ordinary remedy by legal proceedings is ineffectual.

Quong et al. v. McEvoy et al., 70 Mont. 99, 224 Pac. 266.

In the absence of a provision in a lease of a building requiring the tenant to do so, it is the duty of the landlord to keep the premises in a condition fit for occupation, and where by his failure in that

respect a nuisance is created, its presence is not a justification for evicting the tenant because of its existence and in reliance upon the right given a person by this section, to abate a nuisance under

certain conditions. *Quong et al. v. McEvoy et al.*, 70 Mont. 99, 224 Pac. 266.

For text treatment of this subject see vol. 20 Cal. Jur. 306.

8654. Remedies for private nuisance.

Cited in *Lennon et al. v. City of Butte*, 67 Mont. 101, 106, 214 Pac. 1101.

CHAPTER 6.

RELIEF IN GENERAL.

8658. Relief in case of forfeiture.

A defaulting purchaser of land under a contract which made time of the essence of it and under which the vendor exercised his option to declare it ended upon breach, who had made no down payment and had paid only the first year's interest during his two years' possession, was not entitled to recover back what he had expended on the premises, under this section, providing when a party incurring a forfeiture may be relieved therefrom. *Edwards et al. v. Muri*, 73 Mont. 339, 237 Pac. 209.

Where a purchaser of property seeks to avoid forfeiture of an advance payment incurred by reason of his failure to complete his contract, he must, under this section, allege and prove that his default was not the result of his grossly

negligent, wilful or fraudulent breach of duty, failure to do which deprives him of the right to invoke the rule on appeal. *Ellinghouse v. Hansen Packing Co.*, 66 Mont. 444, 213 Pac. 1087.

Notwithstanding the provisions of a contract of sale of ranch land that on default of deferred payments all prior payments should be deemed forfeited as rental, the party in default may obtain relief from forfeiture if not guilty of grossly negligent, wilful or fraudulent breach of duty, on presentation of such grounds therefor as appeal to the conscience of a court of equity. *Fontaine v. Lyng et al.*, 61 Mont. 590, 202 Pac. 112.

For text treatment of this subject see vol. 12 Cal. Jur. 640.

CHAPTER 7.

COMPENSATORY RELIEF—DAMAGES—INTEREST ON DAMAGES—EXEMPLARY DAMAGES.

8659. Persons suffering detriment may recover damages.

Cited in *Tucker v. Missoula Light & Ry. Co.*, 77 Mont. 91, 98, 250 Pac. 11; *Burden v. Elling State Bank*, 76 Mont. 24, 30, 46 A. L. R. 906, 245 Pac. 958;

Griffin v. Chicago etc. Ry. Co., 67 Mont. 386, 392, 216 Pac. 765; *Simonsen v. Barth et al.*, 64 Mont. 95, 100, 208 Pac. 938.

8663. In actions other than contract.

While under this section, interest may be allowed in an action for damages to livestock shipments due to the carriers' negligence, the jury should be instructed that the question of interest is left to their discretion, and refusal to so instruct is error. *Phelps et al. v. Great Northern Ry. Co.*, 66 Mont. 198, 213 Pac. 610.

In an action for damages against a city

for damages caused to plaintiff's property by the grading of a street, the jury may, in their discretion, allow interest on the amount awarded from the time of the completion of the work, under this section. *Wright et al. v. City of Butte*, 64 Mont. 362, 210 Pac. 78.

For text treatment of this subject see vol. 8 Cal. Jur. 798.

8666. Exemplary damages—In what cases allowed.

In an action for conversion in which exemplary damages were asked, an instruction defining the terms "actual" and

"presumed" malice was held not objectionable as authorizing an award of punitive damages for malice in law as

well as malice in fact. *Wray v. Great Falls Paper Co.*, 72 Mont. 461, 234 Pac. 486.

Before exemplary damages may be awarded, actual damages must first be found to have been suffered. *Gilman v. Devereaux*, 67 Mont. 75, 33 A. L. R. 381, 214 Pac. 606.

To warrant the recovery of exemplary damages, defendant must have entertained a guilty intent, the wrongful acts being characterized by circumstances of aggravation, malice, oppression and the like. *Luther v. Lee et al.*, 62 Mont. 174, 204 Pac. 365.

Cited in *Mosback v. Smith Brothers*

Sheep Co., 65 Mont. 42, 50, 210 Pac. 910; as section 6047, Revised Codes, in *Cornner v. Hamilton*, 62 Mont. 239, 245, 204 Pac. 489.

Actual damages as necessary predicate of punitive or exemplary damages, note, 33 A. L. R. 384.

Punitive damages for pollution of stream, note, 38 A. L. R. 1398.

Druggist's liability for punitive damages, note, 31 A. L. R. 1362.

Punitive or exemplary damages for assault, note, 16 A. L. R. 771.

For text treatment of this subject see vol. 8 Cal. Jur. 861; 1927 Supp. 660.

CHAPTER 8.

MEASURE OF DAMAGES.

8667. Measure of damages for breach of contract.

The measure of damages in an action for damages for failure of seller to promptly deliver equipment for a plow, resulting in loss by buyer in preventing performance of a plowing contract, is that specified in this section, as an obligation arising from contract, and not that provided in section 8686 as damages arising *ex delicto*. *Hall v. Advance-Rumely Thresher Co.*, 65 Mont. 566, 212 Pac. 290.

Cited in *Borgeas v. Oregon Short Line Ry. Co.*, 73 Mont. 407, 418, 236 Pac. 1069; *General F. E. Co. v. Northwestern A. S. Co.*, 70 Mont. 1, 7, 223 Pac. 504; *Healy v. Ginoff et al.*, 69 Mont. 116, 123, 220 Pac. 539; sections 6048, 6049, Revised Codes, in *Harrington et al. v. Moore Land Co.*, 59 Mont. 421, 423, 196 Pac. 975.

Measure of damages for breach of warranty as to article purchased for resale, note, 22 A. L. R. 137.

Rate of exchange to be taken into account in assessing damages for breach of warranty, notes, 11 A. L. R. 363; 33 A. L. R. 1285; 43 A. L. R. 520; 50 A. L. R. 1273.

Rate or date at which exchange is to be computed, note, 27 A. L. R. 1189.

Measure of damages for breach of a contract to pay a specific sum in stock, notes, bonds or other securities, note, 34 A. L. R. 931.

Measure of damages for wrongful cancellation of life insurance, note, 48 A. L. R. 110.

Measure of damages for breach of contract to will property, note, 31 A. L. R. 129.

Measure of recovery where seller breaches agreement as to repurchase at selling price, note, 50 A. L. R. 325.

For text treatment of this subject see vol. 8 Cal. Jur. 820; 1927 Supp. 656.

8670. Detriment caused by breach of covenant of "seizin," etc., what is.

Cited in *Healy v. Ginoff et al.*, 69 Mont. 116, 124, 220 Pac. 539.

8674. Breach of agreement to sell personal property not paid for.

Under this section and section 8700, evidence that the market price of the hay purchased by plaintiff, at time and place of delivery, was in excess of the contract price was sufficient to entitle it to substantial damages for defendant's failure to deliver it, even though plaintiff's evidence did not show that it suffered actual damage by having to go into the open market and purchase hay to fill its own contracts or supply its own needs.

Sturm & Drake v. Roberts Elevator Co., 60 Mont. 239, 198 Pac. 545.

Under this section and section 8700, prescribing the measure of damages for breach of a contract for sale of personal property, evidence that the fair market value of sheep of the kind specified in the contract at the time the sheep should have been delivered was one dollar per head more than the contract price was competent. *Johnson v. Hislop*, 272 Fed. 913.

Cited as section 6056, Revised Codes, in *Whitelaw v. Vallance et al.*, 60 Mont. 172, 176, 198 Pac. 449.

For text treatment of this subject see vol. 8 Cal. Jur. 821; 1927 Supp. 656.

8678. Breach of warranty of title to personal property.

The measure of damages for breach of warranty of title to a brick building sold as personal property and situated on land owned by a third person is that set forth in this section and 8700, including the element of cost of removal, if removal was necessary. *Lewis v. Lambros*, 65 Mont. 366, 211 Pac. 212.

Cited in *Courtney v. Gordon*, 74 Mont. 408, 415, 241 Pac. 233; as section 6060, Revised Codes, in *Heffrom v. Thomas et al.*, 61 Mont. 10, 13, 201 Pac. 572.

For text treatment of this subject see vol. 22 Cal. Jur. 915.

8679. Breach of warranty of quality of personal property.

Cited in *Rickards v. Aultman & Taylor M. Co.*, 64 Mont. 394, 403, 210 Pac. 82.

8680. Breach of warranty of quality for special purposes.

Special damages, to be recoverable, must be such as may fairly be supposed to have entered into the contemplation of the parties when they made the contract and must be certain, both in their nature and in respect to the cause from which they proceed. *Butte Floral Co. v. Reed*, 65 Mont. 138, 211 Pac. 325.

warranty as to article purchased for resale, note, 22 A. L. R. 137.

Measure of damages for breach of warranty upon sale of seed, nursery stock, etc., notes, 16 A. L. R. 885; 32 A. L. R. 1246.

For text treatment of this subject see vol. 8 Cal. Jur. 749, 752; vol. 22 Cal. Jur. 1025-1029; 1927 Supp. 653.

Measure of damages for breach of war-

8683. Carrier's delay.

Cited as section 6065, Revised Codes, in *Sankey v. Chicago etc. Ry. Co.*, 60 Mont. 242, 245, 198 Pac. 544.

8685. Breach of promise to marry.

Cited in *Borgeas v. Oregon Short Line Ry. Co.*, 73 Mont. 407, 423, 236 Pac. 1069.

CHAPTER 9.

DAMAGES FOR WRONGS.

8686. Breach of obligation other than contract.

Cited in *Hall v. Advance-Rumely Thresher Co.*, 65 Mont. 566, 575, 212 Pac. 290; *Bush v. Chilcott*, 64 Mont. 346, 351,

210 Pac. 907; as section 6068, Revised Codes, in *Zanos v. Great Northern Ry. Co.*, 60 Mont. 17, 22, 198 Pac. 138.

8687. Wrongful occupation of real property.

Cited in *Adams v. Durfee et al.*, 67 Mont. 315, 318, 215 Pac. 664.

8689. Conversion of personal property.

Plaintiff in an action in conversion may, by waiving interest, elect any date between that of the conversion and the date of the trial, on which to lay his damages. *Klus v. Lamire*, 71 Mont. 445, 230 Pac. 364.

In an action for conversion plaintiff may elect to claim damages for the value of the chattel at the time of the alleged conversion, or its highest market value at

any time between the conversion and the verdict, without interest under this section, but he may not claim both. *Klind v. Valley County Bank of Hinsdale*, 69 Mont. 386, 222 Pac. 439.

An instruction on the measure of damages based on the value of the grain at the time of the conversion, to wit, when defendant refused to deliver it on demand, was proper under this section.

O'Neill v. Montana Elevator Co., 65 Mont. 259, 211 Pac. 222.

Under this section, plaintiff in action for conversion does not, by pleading as his damages the value of property when converted, deprive himself of the right to insist upon damages according to the highest market value of the property at any time between the conversion and the verdict, since he is not required to plead the rule of damages, but may in any appropriate way, even by oral declaration in open court, announce his determination to demand the highest market value. Williams v. Gray, 62 Mont. 1, 203 Pac. 524.

Where plaintiff in an action in conversion has brought himself within the rule requiring diligence in prosecuting the action, the fact that the measure of damages recoverable under it may be inequitable and unjust cannot deprive him of his right to recover the highest market value of the property at any time between the conversion and the verdict, at plaintiff's option, which he might have

obtained but for the wrongful act of defendant. State v. Broadwater Elevator Co. et al., 61 Mont. 215, 201 Pac. 687.

Where an action in conversion has been prosecuted with reasonable diligence, the plaintiff may exercise the option granted him by this section of demanding the highest market value of the property at any time between the conversion and the verdict, by giving notice, if he has not otherwise limited himself by his pleading, at any time before the submission of the cause for verdict or decision. State v. Broadwater Elevator Co. et al., 61 Mont. 215, 201 Pac. 687.

Buyer's damages on conditional seller's conversion of property, note, 37 A. L. R. 112.

Allowance of increase in market value after time of conversion as damages for conversion of commodities or chattels of fluctuating value, note, 40 A. L. R. 1282.

For text treatment of this subject see vol. 8 Cal. Jur. 781.

8692. Seduction.

Sections 8692, 8693 were cited in Borgeas v. Oregon Short Line Ry. Co., 73 Mont. 407, 423, 236 Pac. 1069.

CHAPTER 10.

PENAL DAMAGES.

8696. Injuries to trees, etc.

In an action for trespass brought under this section to recover for timber wrongfully cut from a mining claim, where the evidence was sufficient to sustain a finding for \$900 actual damages sustained, a general verdict for plaintiff for \$2,700, reasonably construed in view of the instruction of the court that under section 8696 the jury could treble the damages if the trespass was wilful, held in effect a finding that the actual detriment sus-

tained was \$900 and that the jury trebled the damages in the belief that the trespass was wilful. Tripp v. Silver Dyke Mining Co., 70 Mont. 120, 224 Pac. 272.

Measure of damages for cutting or removal of timber by cotenant, notes, 2 A. L. R. 1000, 1004; 41 A. L. R. 584.

For text treatment of this subject see vol. 16 Cal. Jur. 685.

CHAPTER 11.

GENERAL PROVISIONS.

8700. Value—How estimated in favor of buyer.

The measure of damages for breach of warranty of title to a brick building sold as personal property and situate on land owned by a third person is that set forth in this section and section 8678, including the cost of removal if removal was necessary. Lewis v. Lambros, 65 Mont. 366, 211 Pac. 212.

Applied with section 8674 as governing rule of substantial damages for market

price of hay. Sturm & Drake v. Roberts Elevator Co., 60 Mont. 239, 198 Pac. 545; as section 6082, Revised Codes, in White-law v. Vallance et al., 60 Mont. 172, 176, 198 Pac. 449.

Applied with section 8674 in Johnson v. Hislop, 272 Fed. 913.

For text treatment of this subject see vol. 8 Cal. Jur. 785.

8704. Limitation of damages.

Measure of damages for the failure of an employer to provide medical or surgical attention and hospital accommodations for his employee where a small sum is deducted monthly from the wages of the latter for such purpose, stated in *Borgeas v. Oregon etc. R. R. Co. et al.*, 73 Mont. 407, 236 Pac. 1069.

This and the following section were cited as sections 6086, 6087, Revised Codes, in *State v. Broadwater Elevator Co. et al.*, 61 Mont. 215, 230, 201 Pac. 687.

For text treatment of this subject see vol. 8 Cal. Jur. 756.

CHAPTER 12.**SPECIFIC RELIEF—POSSESSION OF PROPERTY.****8710. Not to enforce penalty, etc.**

Cited in *State ex rel. Stewart v. District Court*, 77 Mont. 361, 370, 49 A. L. R. 627, 251 Pac. 137.

8713. When holder may be compelled to deliver.

Cited in *Stiemke v. Jankovich et al.*, 68 Mont. 60, 63, 217 Pac. 650.

CHAPTER 13.**SPECIFIC RELIEF—PERFORMANCE OF OBLIGATIONS.****8715. Remedy mutual.**

Under this section, when either of the parties to an obligation is entitled to specific performance, the other party is also entitled to it, the remedy being mutual. *Saint et al. v. Beal*, 66 Mont. 292, 213 Pac. 248.

Under this section the vendor of land under a contract giving him the privilege to declare all of the deferred payments immediately due upon failure to make any one of them, may maintain an action against the vendee to compel specific performance of the contract on

his part by paying the balance of the purchase price. *Saint et al. v. Beal*, 66 Mont. 292, 213 Pac. 248.

Cited in *Kofoed v. Bray*, 69 Mont. 78, 83, 220 Pac. 532.

Specific performance of contract for sale of corporate stock as affected by mutuality of remedy, note, 22 A. L. R. 1048.

For text treatment of this subject see vol. 23 Cal. Jur. 447; 1926 Supp. 1130.

8716. No remedy unless mutual.

Cited in *Hogan v. Thrasher*, 72 Mont. 318, 329, 233 Pac. 607; *Kofoed v. Bray*, 69 Mont. 78, 83, 220 Pac. 532.

8717. Distinction between real and personal property.

Under this section, it is presumed that the breach of an agreement to sell or exchange land cannot be adequately compensated in damages, and where the court on ample evidence found that plaintiff in his action for specific performance could not be made whole by damages, the

contention that specific performance should not have been decreed has no merit. *Hogan v. Thrasher*, 72 Mont. 318, 233 Pac. 607.

For text treatment of this subject see vol. 23 Cal. Jur. 422, 476.

8720. What cannot be specifically enforced.

A writing acknowledging receipt of a sum of money as part payment for a ranch, superseded by a formal deed executed a few days later, was examined and held incapable of specific performance under this section because too indefinite

and lacking in mutuality. *Kofoed v. Bray*, 69 Mont. 78, 220 Pac. 532.

Cited in *Sanger v. Huguenel et al.*, 65 Mont. 236, 243, 211 Pac. 349.

Enforceability of provision for renewal

of lease at rental not determined, note, 30 A. L. R. 572.

Specific performance of contract resulting from collective bargaining between employer and employee, note, 22 A. L. R. 116.

For text treatment of this subject see vol. 17 Cal. Jur. 729; vol. 23 Cal. Jur. 424, 429, 473, 479, 483, 486; 1926 Supp. 1130.

8721. What parties cannot be compelled to perform.

Cited in *Saint et al. v. Beal*, 66 Mont. 292, 297, 213 Pac. 248.

CHAPTER 14.

SPECIFIC RELIEF—REVISION AND RESCISSION OF CONTRACTS.

8726. When contract may be revised.

For discussion of reformation of a contract for the sale of lands, on the ground of mistake, see *Ayers v. Buswell*, 73 Mont. 518, 238 Pac. 591.

Neither the remedy afforded by section 7565 nor that granted by this section, under which he may have the contract reformed on the ground of fraud, is exclusive, each being independent of the other; hence the defrauded party may elect to pursue either remedy. *Campana v. Dobry*, 69 Mont. 240, 221 Pac. 540.

Where a mistake in an instrument was unilateral, made only by one party to it and not mutual, nor one which the other party to it knew or suspected, reformation did not lie. *Comeford v. United*

States F. & G. Co., 59 Mont. 243, 196 Pac. 984.

Cited in *McDaniel v. Hager-Stevenson Oil Co.*, 75 Mont. 356, 362, 243 Pac. 582; *Humble v. St. John et al.*, 72 Mont. 519, 522, 234 Pac. 475.

Mistake in lease as ground for relief, note, 26 A. L. R. 472.

Mistake as to one's interest in land under law of descent, as subject of relief, note, 39 A. L. R. 194.

Reformation of contract of sale because of mistake as to amount of commodity called for, note, 31 A. L. R. 334.

For text treatment of this subject see vol. 22 Cal. Jur. 717.

8728. Principles of revision.

Cited in *Ayers v. Buswell*, 73 Mont. 518, 528, 238 Pac. 591.

Cited in *Humble v. St. John et al.*, 72 Mont. 519, 523, 234 Pac. 475.

8730. When rescission may be adjudged.

Cited in *Wilson v. Corcoran et al.*, 73 Mont. 529, 532, 237 Pac. 521.

CHAPTER 15.

SPECIFIC RELIEF—CANCELLATION OF INSTRUMENTS.

8733. When cancellation may be ordered.

An action to have an oil and gas lease declared terminated and canceled of record for failure of the lessee to commence drilling operations or make the stipulated payment in lieu thereof, is one in equity and falls within the provisions of this section, authorizing cancellation to remove a cloud upon title. *McNamer Realty Co. v. Sunburst etc. Co.*, 76 Mont. 332, 247 Pac. 166.

The purpose of an action brought under this section, to have an oil and gas lease declared void and terminated by the failure of the lessee to observe its conditions, is to clear the record of an apparent cloud in the shape of an instrument which has ceased to have any effect but

still remains of record, and in such a case the equitable rules as to relief from a forfeiture are not applicable. *McNamer Realty Co. v. Sunburst etc. Co.*, 76 Mont. 332, 247 Pac. 166.

In an action brought under this section, as distinguished from one brought under section 9479, the pleader must state facts disclosing the apparent validity of the instrument attached and its actual invalidity. *Slette v. Review Publishing Co.*, 71 Mont. 518, 230 Pac. 580.

Where plaintiff in his action to remove a cloud from the title to property had based his cause of action upon the levy of a writ of attachment, his contention on appeal that the writ was improperly

levied and therefore constituted no lien on the property deprives him of the relief asked for, since if it constituted no lien it cast no cloud which needed removal. *Newman v. Assn. of Credit Men*, 63 Mont. 545, 208 Pac. 914.

In an action to cancel instruments claimed to constitute clouds upon the title to mining property, thus preventing plaintiff from obtaining a bidder upon execution sale under a judgment in a mechanic's lien foreclosure proceeding, complaint held insufficient to state a cause of action under this section and section 8734, Revised Codes (conceding, but not deciding, that the action could be maintained under those sections), for failure to allege the facts showing the apparent

validity of the instruments claimed to constitute clouds as well as the facts showing their invalidity. *Heavlin v. O'Connor et al.*, 61 Mont. 507, 202 Pac. 1115.

Cited in *Fleming v. Consolidated M. S. Co.*, 74 Mont. 245, 254, 240 Pac. 376; *Solberg v. Sunburst Oil & Gas. Co. et al.*, 70 Mont. 177, 182, 225 Pac. 612.

Sections 8733, 8734 were cited in *Hammond-Dodson Co. et al. v. Slattery*, 67 Mont. 489, 496, 216 Pac. 323; *Poulos v. Lyman Brothers Co.*, 63 Mont. 561, 566, 567, 208 Pac. 598.

For text treatment of this subject see vol. 4 Cal. Jur. 761; vol. 22 Cal. Jur. 107.

8734. Instrument obviously void.

Cited in *Fleming v. Consolidated M. S. Co.*, 74 Mont. 245, 255, 240 Pac. 376; *Newman v. Association of Credit Men*, 63 Mont. 545, 554, 208 Pac. 914; *Hammond-Dodson Co. v. Slattery*, 67 Mont. 489, 496, 216 Pac. 323.

Applied with section 8733 in *Heavlin v. O'Connor et al.*, 61 Mont. 507, 202 Pac. 1115.

For text treatment of this subject see vol. 4 Cal. Jur. 762.

PART VII.

Maxims and General Provisions.

CHAPTER 1.

MAXIMS.

8739.

Cited in *State ex rel. Petters & Co. v. District Court*, 76 Mont. 143, 150, 245 Pac. 529.

8743.

Cited in *State v. Loomis*, 75 Mont. 88, 99, 242 Pac. 344; *Calvert et al. v. Anderson et al.*, 73 Mont. 551, 558, 236 Pac. 847; *Baroch v. Greater Montana Oil Co.*,

70 Mont. 93, 96, 225 Pac. 800; *Jeffers v. Montana Power Co. et al.*, 68 Mont. 114, 143, 217 Pac. 652.

8744.

Cited in *State v. Roop*, 73 Mont. 177, 235 Pac. 336; *Swords v. Occident Elevator Co.*, 72 Mont. 189, 194, 232 Pac. 189.

8746.

Cited in *Kirschbaum v. Mayn*, 76 Mont. 320, 329, 48 A. L. R. 1425, 246 Pac. 953;

Sweeny v. City of Butte, 64 Mont. 230, 242, 208 Pac. 943.

8752.

Cited in *McIntyre et al. v. Dawes*, 71 Mont. 367, 373, 229 Pac. 846; *State v. District Court et al.*, 66 Mont. 496, 509, 33 A. L. R. 464, 214 Pac. 85; *Simonsen v.*

Barth et al., 64 Mont. 95, 100, 208 Pac. 938; as section 6191, Revised Codes, in *Samuell v. Moore Mercantile Co. et al.*, 62 Mont. 232, 236, 204 Pac. 376.

8753.

Cited in *Puckett v. Sherman & Reed*, 62 Mont. 395, 400, 205 Pac. 250; as section 6192, Revised Codes, in *Elmer Jack-*

son v. Lomas, 60 Mont. 8, 15, 198 Pac. 434.

8756.

Cited in *O'Hanlon et al. v. Ruby Gulch Mining Co.*, 64 Mont. 318, 328, 209 Pac. 1062.

8757.

Cited in *State v. District Court et al.*, 66 Mont. 496, 509, 33 A. L. R. 464, 214 Pac. 85.

8758.

Cited in *Town of Cascade v. County of Cascade*, 75 Mont. 304, 308, 243 Pac.

806; *Guerin v. Sunburst Oil & Gas Co.*, 68 Mont. 365, 371, 218 Pac. 949.

8760.

Cited in *State ex rel. Petters & Co. v. District Court*, 76 Mont. 143, 150, 245 Pac. 529; *LeClair v. School District No.*

28, 74 Mont. 385, 391, 240 Pac. 391; *Downey et al. v. Northern Pacific Ry. Co.*, 72 Mont. 166, 185, 232 Pac. 531.

8761.

Cited in *LeClair v. School District No.* 28, 74 Mont. 385, 391, 240 Pac. 391; *Mutual Oil Co. v. Hamilton et al.*, 73

Mont. 385, 390, 236 Pac. 545; *Wells-Dickey Co. v. American Alliance Ins. Co.*, 69 Mont. 586, 592, 223 Pac. 489.

8766.

Cited in *Walden v. Bitter Root Irr. Dist.*, 68 Mont. 281, 290, 217 Pac. 646.

8772.

Cited in *Erlandson v. Erskine et al.*, 76 Mont. 537, 546, 248 Pac. 209; *Union Bank & Trust Co. v. Lynn*, 73 Mont. 473,

477, 237 Pac. 490; *Colwell v. Grandin Investment Co.*, 64 Mont. 518, 529, 210 Pac. 765.

CHAPTER 2.

DEFINITIONS AND GENERAL PROVISIONS.

8776. Meaning of words.

Where a word (or phrase) is defined in the codes, the same meaning must be given it, under this section wherever it occurs, unless it plainly appears that it was the legislative intention to attach to

it a different meaning. In re *Tripps' Estate*, 71 Mont. 154, 227 Pac. 1005.

Cited in *State v. McGraw*, 74 Mont. 152, 158, 240 Pac. 812.

8780. Notice, actual and constructive.

Cited in *Hoppin v. Long*, 74 Mont. 558, 573, 241 Pac. 636.

CODE OF CIVIL PROCEDURE.

PART I.

Courts of Justice.

CHAPTER 3.

SUPREME COURT.

8805. Power of supreme court.

Under this section, on appeal in an equity case the supreme court must review all questions of law and of fact and may, where all the facts are presented, determine the case finally for the purpose of putting an end to further litigation. State ex rel. U. S. Fidelity & Guaranty Co. v. District Court et al., 77 Mont. 594, 251 Pac. 1061.

Where the supreme court on appeal in an equity case, on a full review of the law and the facts, decided that the judgment in favor of the plaintiff could not be sustained, but reversed it and remanded the cause without ordering a new trial or the taking of further testimony, it was the duty of the trial court on receipt of the remittitur directing such further proceedings as were not inconsistent with the opinion rendered, to enter judgment dismissing the complaint on the merits and mandamus was a proper remedy to compel it to do so. State ex rel. U. S. Fidelity & Guaranty Co. v. District Court, 77 Mont. 594, 251 Pac. 1061.

Under this section, the supreme court has power, on reversal of the judgment appealed from, to direct entry of a proper judgment in favor of the appellant where the record contains a full recital of all that took place at the trial, and it is apparent that the respondent, after submitting all the evidence at his command, failed to defeat or diminish the appellant's cause. Alley v. Butte & Western Mining Co., 77 Mont. 477, 251 Pac. 517.

Where on appeal in an equity case, the record does not show a decided preponderance in the evidence against the findings of the trial court, or the evidence furnished reasonable ground for differ-

ent conclusions, the findings will not be disturbed. Kummrow v. Bank of Ferfus County et al., 66 Mont. 434, 214 Pac. 1098.

Cited in Heater v. Boston Montana Corp. et al., 75 Mont. 532, 544, 244 Pac. 501; McDaniel v. Hager-Stevenson Oil Co., 75 Mont. 356, 359, 243 Pac. 582; Rochester v. Bennett, 74 Mont. 293, 307, 240 Pac. 384; Bresee v. Smith et al., 73 Mont. 312, 320, 237 Pac. 492; Callan v. Hample, 73 Mont. 321, 328, 236 Pac. 550; Humble v. St. John et al., 72 Mont. 519, 522, 234 Pac. 475; Feeley v. Feeley, 72 Mont. 84, 94, 231 Pac. 908; Security State Bank v. McIntyre, 71 Mont. 186, 200, 228 Pac. 618; Scott v. Prescott, 69 Mont. 540, 549, 223 Pac. 490; Giebler v. Giebler, 69 Mont. 347, 352, 222 Pac. 436; Lohman v. Poor et al., 68 Mont. 579, 585, 220 Pac. 1094; Moulton et al. v. Irish et al., 67 Mont. 504, 510, 218 Pac. 1053; Harrison v. Riddell et al., 64 Mont. 466, 479, 210 Pac. 460; Leigland v. Rundle L. & A. Co., 64 Mont. 154, 164, 208 Pac. 1075; Nolan v. Benninghoff et al., 64 Mont. 68, 72, 208 Pac. 905; Gray v. Grant et al., 62 Mont. 452, 472, 206 Pac. 410; Violet et al. v. Martin, 62 Mont. 335, 205 Pac. 221; as section 6253, Revised Codes, in Stettheimer et al. v. City of Butte, 60 Mont. 111, 115, 198 Pac. 455.

Legislative power to require appellate court to review evidence, notes, 19 A. L. R. 744; 24 A. L. R. 1267; 33 A. L. R. 10.

For text treatment of this subject see vol. 2 Cal. Jur. 803, 969, 990, 1038; 1926 Supp. 128, 163.

CHAPTER 4.

DISTRICT COURTS.

8813.1. Residence of judge sixteenth district. That after the appointment, provided for in this act of an additional judge for the six-

teenth judicial district, the residence of the judges of said sixteenth judicial district shall be as prescribed by law for the residence of district judges.

En. Sec. 3, Ch. 144, L. 1919; Amd. Sec. 1, Ch. 15, L. 1923.

CHAPTER 6.

GENERAL PROVISIONS RESPECTING THE POWERS, PROCEEDINGS AND HOLDING OF COURTS OF JUSTICE.

8845. Courts of record may make rules.

Cited in *Rowan v. Gazette Printing Co. et al.*, 69 Mont. 170, 176, 220 Pac. 1104.

CHAPTER 9.

POWERS OF JUDGES AT CHAMBERS.

8867.1. Jurisdiction of district judges to make certain orders. The jurisdiction of the judges of the district courts of the state of Montana, in rendering and signing judgments and making findings and rendering decrees, making orders to show cause and all ex parte orders, in chambers, shall be coextensive with the boundaries of the state of Montana, as to all matters presented to or heard by them, and of which they have jurisdiction, and such judgments, findings, decrees and orders, when so rendered, made or signed, shall have the same force and effect as to matters under their jurisdiction as if done in open court, in the county in which the action, proceeding or matter is pending or was heard.

En. Sec. 1, Ch. 53, L. 1923.

Quaere: May a district judge under the provisions of this section, declaring the jurisdiction of district judges in certain judicial matters coextensive with the

state, settle a bill of exceptions outside of the county in which the cause was tried? *Hale et al. v. Belgrade Co., Ltd.*, 75 Mont. 99, 242 Pac. 425.

CHAPTER 10.

DISQUALIFICATION OF JUDICIAL OFFICERS.

8868. Cases in which judge may be disqualified—Calling in another judge. Any justice, judge, or justice of the peace must not sit or act as such in any action or proceeding:

1. To which he is a party, or in which he is interested;
2. When he is related to either party by consanguinity or affinity within the sixth degree, computed according to the rules of law;
3. When he has been attorney or counsel for either party in the action or proceeding, or when he rendered or made the judgment, order, or decision appealed from;
4. When either party makes and files an affidavit as hereinafter provided, that he has reason to believe, and does believe, he cannot have a fair and impartial hearing or trial before a district judge by reason of the bias or prejudice of such judge. Such affidavit may be made by any party to an action, motion, or proceeding, personally, or by his attorney or agent, and shall be filed with the clerk of the district court in which the same may be pending at least five days before the day appointed or fixed for the hearing or trial of any such action, motion or

proceeding, (providing such party shall have had notice of the hearing of such action, motion, or proceeding for at least the period of five days and in case he shall not have had notice for such length of time, he shall file such affidavit immediately upon receiving such notice). Upon the filing of the affidavit, the judge as to whom said disqualification is averred shall be without authority to act further in the action, motion, or proceeding, but the provisions of this section do not apply to the arrangement of the calendar, the regulation of the order of business, the power of transferring the action or proceeding to some other court, nor to the power of calling in another district judge to sit and act in such action or proceeding, providing that no judge shall so arrange the calendar so as to defeat the purposes of this section. No more than two judges can be disqualified for bias or prejudice, in said action or proceeding, at the instance of the plaintiff, and no more than two at the instance of the defendant, in said action or proceeding, and this limitation shall apply however many parties or persons in interest may be plaintiffs or defendants in such action or proceeding. If there be more than one judge in any judicial district in which said affidavit is made and filed, upon the first disqualification of a judge in the cause, another judge, residing in the judicial district wherein the affidavit is made and filed, must be called in to preside in such action, motion, or proceeding; and upon the second or any subsequent disqualification of a judge in the cause, a district judge of another judicial district of the state must be called in to preside in such action, motion, or proceeding, or the action, motion, or proceeding transferred to a district judge of another judicial district of the state; when another judge has assumed jurisdiction of an action, motion, or proceeding, the clerk of the district court in which the same was pending, shall at once notify the parties or their attorneys of record in the same, either personally or by registered mail, of the name of the judge called in, or to whom such action, motion, or proceeding was transferred. Such second or subsequent affidavit of disqualification shall be filed with the clerk of the district court in which such action, motion or proceeding may be pending within three days after the party or his attorney of record, filing such affidavit, has received notice as to the judge assuming jurisdiction of such action, motion, or proceeding.

Amd. Sec. 1, Ch. 93, L. 1927.

For discussion of the subject of the powers of local and invited judges, see *Rowan v. Gazette Printing Company*, 69 Mont. 170, 220 Pac. 1104.

In proceedings for the removal of civil officers under section 11702, neither party has the right to file an affidavit disqualifying a district judge for implied bias or prejudice under this section. *State ex rel. Houston v. District Court*, 61 Mont. 558, 202 Pac. 756.

The provision of this section, requiring an affidavit disqualifying a district judge for imputed bias or prejudice to be filed at any time before the day fixed for the hearing or trial of an action, motion or proceeding, does not permit its filing after verdict and before entry of judg-

ment. In *re Miller's Estate*, 71 Mont. 330, 229 Pac. 851.

Constitutionality of statute making mere filing of affidavit of bias or prejudice sufficient to disqualify judge, note, 46 A. L. R. 1179.

Disqualification of judge or one acting in judicial capacity by pecuniary interest in fine, penalty or forfeiture imposed upon defendant, note, 50 A. L. R. 1256.

Stock holding as disqualification of judge to sit in action or proceeding, note, 48 A. L. R. 617.

Residence or ownership of property in city or other political subdivision which is party to or interested in action as disqualifying judge, note, 33 A. L. R. 1322.

For text treatment of this subject see vol. 14 Cal. Jur. 809 et seq.; 1926 Supp. 921, 922.

CHAPTER 12.

MISCELLANEOUS PROVISIONS RESPECTING COURTS AND JUDICIAL OFFICERS.

8882. Means to carry jurisdiction into effect.

The fact that sections 6902-6904 do not provide for a form of affidavit for attachment is of no moment, since under this section, where jurisdiction is conferred on a court, all the means necessary to give it effect are also given and in the absence of such a provision, the court may adopt any suitable process or mode of proceeding in the premises. Daley et al. v. Torrey et al., 71 Mont. 513, 230 Pac. 782.

Cited in State ex rel. Golden Valley County v. District Court, 75 Mont. 122, 126, 242 Pac. 421; In re Tripps' Estate, 71 Mont. 154, 162, 227 Pac. 1005; State v. Certain Intoxicating Liquors, 71 Mont. 79, 86, 87, 227 Pac. 472; In re McLure's Estate, 68 Mont. 556, 569, 220 Pac. 527.

For text treatment of this subject see vol. 7 Cal. Jur. 622; 1926 Supp. 520.

CHAPTER 14.

QUALIFICATIONS AND EXEMPTIONS OF JURORS.

8890. Who competent to act as juror.

Where a defendant accused of crime does not avail himself of the privilege of examining into the qualifications of a prospective juror before the jury is sworn, he may not assign a juror's incompetency as ground for a new trial, even though his knowledge of the incompetency comes to him for the first time after the trial. State v. Danner, 70 Mont. 517, 226 Pac. 475.

Cited in State ex rel. Shea v. Cocking et al., 66 Mont. 169, 176, 28 A. L. R. 772, 213 Pac. 594.

Unfamiliarity with English as affecting competency of juror, note, 34 A. L. R. 194.

For text treatment of this subject see vol. 15 Cal. Jur. 351-353.

CHAPTER 15.

SELECTING AND RETURNING JURORS.

8896. Jury lists, by whom and when to be made.

Sections 8896-8898 were cited in State v. Danner, 70 Mont. 517, 520, 226 Pac. 475.

8899. Duty of clerk—Jury-boxes.

Cited in Lee et al. v. Hayden, 63 Mont. 589, 594, 208 Pac. 596.

CHAPTER 16.

DRAWING AND SUMMONING JURORS FOR COURTS OF RECORD.

8902. Summoning of trial jury.

Where a trial court, instead of ordering a panel of regular jurors drawn in a number deemed by it sufficient for the term, had them drawn under three successive orders as occasion required, defendant was not in position to complain of the procedure followed, he not having been prejudiced thereby, and this section not limiting the number which

may be drawn. State v. Vuckovich, 61 Mont. 480, 203 Pac. 491.

Sections 8902-8906 were cited in Lee et al. v. Hayden, 63 Mont. 589, 594, 208 Pac. 596.

For text treatment of this subject see vol. 15 Cal. Jur. 388.

8905. Jury-box No. 2.

Cited in Lee et al. v. Hayden, 63 Mont. 589, 594, 208 Pac. 596.

8910. Sheriff to summon jurors, how.

Cited in *Lee et al. v. Hayden*, 63 Mont. 589, 594, 208 Pac. 596.

8911. Drawing and summoning jurors to attend forthwith.

District courts may not arbitrarily draw a jury from box No. 3 or excuse jurors and thus bring about a condition under which the exercise of their discretion as to the use of box No. 3 may be invoked. *Hanley v. Great Northern Ry. Co.*, 66 Mont. 267, 213 Pac. 235.

Where at the opening of or at any other stage of a trial term, the district court finds an insufficient number of jurors drawn from box No. 1 present, it may in its discretion order the drawing of additional jurors from box No. 3 for service on the regular panel and retain them during the trial term. *Lee et al. v. Hayden*, 63 Mont. 589, 208 Pac. 596.

Where the names in jury-box No. 1 had been so depleted that a sufficient num-

ber did not remain from which to secure a jury, and where it appeared that a sufficient number could not be procured without great delay or expense, the court, under this section, properly directed the clerk to draw names from jury-box No. 3. *State v. Pippi*, 59 Mont. 116, 195 Pac. 556.

Cited in *Lee et al. v. Hayden*, 63 Mont. 589, 594, 208 Pac. 596; as section 6357, Revised Codes, in *State v. Vuckovich*, 61 Mont. 480, 489, 203 Pac. 491; *State v. Showen*, 60 Mont. 474, 478, 199 Pac. 917.

For text treatment of this subject see vol. 15 Cal. Jur. 390.

CHAPTER 20.

STENOGRAPHERS.

8933. Salary and expenses of stenographer. Every stenographer appointed under the provisions of this chapter receives an annual salary of three thousand dollars, and no other compensation except as provided in section 8931, payable in monthly installments out of the general funds of the counties comprising the district for which he is appointed, according and in proportion to the number of civil and criminal actions entered and commenced in the district courts of such counties respectively in the preceding year; and it shall be the duty of the judge of such district, on the first day of January of each year, or as soon after as may be, to apportion the amount of such salary to be paid by each county in his district on the basis aforesaid. The stenographer is allowed, in addition to the salary and fees above provided, in judicial districts comprising more than one county, his actual and necessary expenses of transportation and living when he goes on official business to a county of his judicial district other than the county in which he resides, from the time he leaves his place of residence until he returns thereto, said expenses to be apportioned and payable in the same way as the salary.

Amd. Sec. 1, Ch. 36, L. 1927.

CHAPTER 21.

QUALIFICATIONS, ADMISSION, LICENSE AND DISBARMENT OF ATTORNEYS.

8940. Admission of attorneys from other states.

While under this section courts may permit a nonresident attorney who has been admitted to practice in his own state, to appear in a cause on motion of a duly admitted attorney in this state, they may not, under the above rule, allow a fee for his services to his client if successful. *Vaill v. Northern Pacific Ry.*

Co., 66 Mont. 301, 213 Pac. 446.

Cited as section 6385, Revised Codes, in *State v. District Court et al.*, 62 Mont. 60, 64, 203 Pac. 860.

For text treatment of this subject see vol. 3 Cal. Jur. 591, 595, 596-598; 1926 Supp. 220.

8943. Penalty for practicing without license.

One who, though not admitted by the supreme court to practice in the courts of the state, holds himself out as an attorney at law by conducting legal correspondence on letter-heads on which was printed his name, followed by "Attorney at Law," by signing himself as such, by advertising himself by the use of a professional card in newspapers and telephone directory, and by a sign on his office building as an attorney, by taking

and perfecting appeals from the justice court to the district court and appearing in the appellate court in connection with such appeals, is practicing without a license and guilty of contempt of court, under this section. In *re* Phillips, 64 Mont. 492, 210 Pac. 89.

For text treatment of this subject see vol. 3 Cal. Jur. 588.

8951. Complaints against attorney—How instituted and prosecuted.

Cited in *In re Young*, 77 Mont. 332, 337, 250 Pac. 957.

8958. Allowance of attorney's fees to unlicensed persons forbidden.

Under this section an attorney's fee is not allowable in any action or proceeding in which attorneys' fees are allowed by law, unless the attorney has been duly admitted and licensed to practice in Montana, and, though the words of the section are "duly admitted or licensed" the word "or" must be read "and," any other

construction rendering the provision meaningless. *Vaill v. Northern Pacific Ry. Co.*, 66 Mont. 301, 213 Pac. 446.

Unlicensed attorney's right to recover compensation, notes, 4 A. L. R. 1087; 30 A. L. R. 851; 42 A. L. R. 1228.

8961. Disbarment of attorneys—Causes—Jurisdiction.

As against the assertion that the supreme court should not retain jurisdiction of a disbarment proceeding where the accused attorney is charged with felonies committed without the sphere of his duties as such, held, under this section, that where the court, after an investigation by the attorney general and report made to it by him sufficient to move its discretion, has decided to act, its exercise of that discretion does not present a jurisdictional question. In *re Young*, 77 Mont. 332, 250 Pac. 957.

Moral turpitude within the meaning of this section, authorizing the disbarment of an attorney on conviction of a crime or misdemeanor involving moral turpitude, is everything done contrary to justice, honesty or good morals. In *re Peters*, 73 Mont. 284, 235 Pac. 772.

Under subdivision 1 of this section, whenever it is brought to its attention that an attorney of the bar of this state has been convicted of a felony or misdemeanor involving moral turpitude in a state or federal court, the supreme court will on its own motion and on the record of conviction alone strike his name from the roll of attorneys. In *re Peters*, 73 Mont. 284, 235 Pac. 772.

Since, generally, the record of conviction of an attorney itself shows whether the crime or misdemeanor of which he was convicted involved moral turpitude, the only question before the supreme court in a disbarment proceeding based

upon subdivision 1 of this section is whether he was convicted, not whether he was actually guilty. In *re Peters*, 73 Mont. 284, 235 Pac. 772.

Aspersing character or reputation of litigant, note, 41 A. L. R. 494.

Conduct in respect of coaching law students as grounds for disbarment, note, 31 A. L. R. 748.

Methods employed in collecting debts, note, 47 A. L. R. 267.

Disloyal acts or opinions, notes, 8 A. L. R. 1262; 12 A. L. R. 1189; 19 A. L. R. 936.

Presenting or permitting false evidence, note, 14 A. L. R. 868.

Constitutionality of statute providing for disbarment of attorney convicted of crime, note, 32 A. L. R. 1068.

Violation of liquor law as infamous crime or offense involving moral turpitude, notes, 40 A. L. R. 1049; 48 A. L. R. 266.

Pardon as affecting right to disbar attorney, note, 50 A. L. R. 384.

Moral delinquency as ground for disbarment or suspension of attorney, note, 43 A. L. R. 107.

Representation of interest adverse to that of former client, note, 51 A. L. R. 1315.

Disbarment for failure to account for money of client, note, 43 A. L. R. 54.

For text treatment of this subject see vol. 3 Cal. Jur. 720-736; 1926 Supp. 229.

8963. Proceedings for removal or suspension.

Cited in *In re Peters*, 73 Mont. 284, 287, 235 Pac. 772.

CHAPTER 22.**GENERAL PROVISIONS RELATING TO THE POWERS, DUTIES, LIABILITIES AND COMPENSATION OF ATTORNEYS.****8974. Authority.**

Under the rule that if an attorney acts within the scope of his employment, express or implied, the client is bound, it is within the implied power of an attorney regularly employed in a criminal case to consent to the setting or continuance of the cause for trial, the provision of this section that an attorney has authority to bind his client "by his agreement filed with the clerk, or entered upon the minutes of the court, and not otherwise," neither enlarging nor abridging the authority of the attorney as it existed under the common-law rule, but only pre-

scribing a rule for its exercise. *State v. Turlock*, 76 Mont. 549, 248 Pac. 169.

Cited in *Davenport v. Davenport*, 69 Mont. 405, 410, 222 Pac. 422.

Remittitur by attorney from verdict or judgment in favor of infant as within his authority, note, 30 A. L. R. 1111.

Right of attorney to continue divorce or separation suit against wishes of his client, note, 45 A. L. R. 941.

For text treatment of this subject see vol. 3 Cal. Jur. 652, 661, 669; 1926 Supp. 225.

8980. Certain loans prohibited.

Under this section, an attorney is prohibited from buying any note, debt or other thing in action for the purpose of bringing suit thereon, and where his intent is established, he cannot recover. *Strever v. Sinclier et al.*, 66 Mont. 258, 213 Pac. 253.

Sections 8980, 8981 were cited in *Coleman v. Sisson*, 71 Mont. 435, 442, 230 Pac. 582.

For text treatment of this subject see vol. 3 Cal. Jur. 607; vol. 4 Cal. Jur. 1121.

8993. Lien for compensation.

While under this section and 9786, an attorney may contract with his client freely as to his compensation before the fiduciary relation commences, as respects such a contract made after the relation began he has the burden of showing that the contract was fair and reasonable and entered into freely by the client, and that the latter fully knew and understood its provisions; in the absence of such allegations the complaint is insufficient. *Cole-*

man v. Sisson, 71 Mont. 435, 230 Pac. 582.

Cited in *Downey et al. v. Northern Pacific Ry. Co.*, 72 Mont. 166, 181, 232 Pac. 531.

Lien of attorney on public fund or property, notes, 2 A. L. R. 274; 24 A. L. R. 933.

Attorney's lien on decedent's estate, note, 50 A. L. R. 657.

8994. Attorney may be compelled to show his authority.

Where a defendant does not challenge in the trial court the authority of an attorney of his adversary to appear for him, in accordance with the provisions of this section, his right to question it later is waived. *In re Miller's Estate*, 71 Mont. 330, 229 Pac. 851.

Where defendant had entered a plea of guilty to the charge of illegal transportation of intoxicating liquor, and later authorized his attorney to withdraw that

plea and enter one of guilty on condition that the district judge would agree to the imposition of a certain fine with the jail sentence suspended, and the attorney entered an unconditional plea, of guilty, he exceeded his authority and the court, under this section, erred in refusing to set aside the judgment pronounced on the latter plea. *State v. Dow*, 71 Mont. 291, 229 Pac. 402.

PART II.

Judicial Remedies.

CHAPTER 1.

JUDICIAL REMEDIES—ACTIONS AND SPECIAL PROCEEDINGS.

8995. Judicial remedies defined.

Cited as section 8077, Revised Codes, in *State ex rel. Houston v. District Court*, 61 Mont. 558, 566, 202 Pac. 756.

8996. Division of judicial remedies.

Sections 8996-8999 were cited in state in *State v. District Court*, 61 Mont. 558, 571, 202 Pac. 756.
v. Rouleau et al., 68 Mont. 529, 543, 219 Pac. 1096; as section 8078, Revised Codes,

8997. Action defined.

Under the rule that he only may maintain an action who can show that he has a right to be enforced or a wrong to be prevented or redressed, plaintiff in an action to enjoin a sale of county bonds duly voted, who alleged himself to be a citizen, resident and qualified elector of the county, but who did not make it appear that he was a taxpayer or that

he had been denied the right to vote at the election, had no standing in court as a suitor. *Holt v. Custer County et al.*, 75 Mont. 328, 243 Pac. 811.

Cited in *State v. Lewis*, 67 Mont. 447, 451, 216 Pac. 337.

For text treatment of this subject see vol. 1 Cal. Jur. 306; 1926 Supp. 16.

8999. Division of actions.

Cited as section 8081, Revised Codes, in *State v. District Court*, 61 Mont. 558, 571, 202 Pac. 756.

9005. Civil action—By whom prosecuted.

Cited in *State ex rel. Stewart v. District Court*, 77 Mont. 361, 372, 49 A. L. R. 627, 251 Pac. 137.

9007. Civil and criminal remedies not merged.

Cited in *State ex rel. Stewart v. District Court*, 77 Mont. 361, 372, 49 A. L. R. 627, 251 Pac. 137.

PART III.

Civil Actions.

CHAPTER 1.

FORM OF CIVIL ACTION.

9008. One form of civil actions only.

While under the codes there is but one form of civil action for the enforcement and protection of private rights and redress or prevention of private wrongs, yet the common-law distinctions between the different causes of action still obtain, the reasons underlying them being still the same. *Butala v. Union Electric Co. et al.*, 70 Mont. 580, 226 Pac. 899.

Sections 9008-9832 were cited in *In re Spriggs' Estate*, 68 Mont. 92, 95, 216 Pac. 1108.

Cited as section 6425, Revised Codes, in *Samuell v. Moore Mercantile Co. et al.* 62 Mont. 232, 236, 204 Pac. 376.

For text treatment of this subject see vol. 1 Cal. Jur. 309; 1926 Supp. 16.

CHAPTER 3.

LIMITATIONS OF ACTIONS FOR THE RECOVERY OF REAL PROPERTY.

9015. Seizin within ten years—When necessary in actions for real property—Action for dower.

Under this section and 9018, a prescriptive right can be built upon public use of land for street purposes, jurisdiction having been acquired by the city authorities and maintained for a period of ten years. *Stettheimer et al. v. City of Butte*, 60 Mont. 111, 198 Pac. 455.

Sections 9015, 9016 were cited in *Bearmouth Placer Co. v. Passerell*, 73 Mont. 306, 308, 236 Pac. 673; *Boehler v. Boyer et al.*, 72 Mont. 472, 477, 234 Pac. 1086.

Sections 9015, 9016 were cited as sections 6432, 6433, Revised Codes, in *Mouat v. Minneapolis M. & S. Co. et al.*, 68 Mont. 253, 258, 217 Pac. 342; *Rodda v. Best et al.*, 68 Mont. 205, 217 Pac. 669; with section 9016 in *Hays v. De Atley et al.*, 65 Mont. 558, 562, 212 Pac. 296.

For text treatment of this subject see vol. 16 Cal. Jur. 434; 1926 Supp. 980; vol. 22 Cal. Jur. 124.

9018. Possession—When presumed—Occupation deemed under legal title, unless adverse.

Where the predecessor of the owner of a ditch right had acquired title to the right of way therefor over the public domain by grant from the United States, it will be presumed in the absence of evidence to the contrary, under this section in an action to enjoin its use by another, that the owner had been possessed thereof within the time required by law and that the occupation by the other party had been in subordination to the legal title, as against the contention that the right was barred by section 9015 in that neither plaintiff nor his predecessor had been in possession or seised of the ditch within ten years next preceding the commencement of the action. *Rodda v. Best et al.*, 68 Mont. 205, 217 Pac. 669.

For discussion of facts constituting adverse possession of land within Northern Pacific land grant, see Northern Pacific

Ry. Co. v. Cash, 67 Mont. 585, 216 Pac. 782; *Northern Pacific Ry. Co. v. Smith*, 62 Mont. 108, 203 Pac. 503.

Under this section the occupation of property by one not the owner is deemed to have been under and in subordination to the legal title. *Blackfoot Land Development Co. v. Burks*, 60 Mont. 544, 199 Pac. 685.

Cited in *Stetson v. Youngquist et al.*, 76 Mont. 600, 608, 248 Pac. 196; *Bearmouth Placer Co. v. Passerell*, 73 Mont. 306, 308, 236 Pac. 673; *Northern Pacific Ry. Co. v. Cash*, 67 Mont. 585, 596, 216 Pac. 782; as section 6435, Revised Codes, in *Stettheimer et al. v. City of Butte*, 60 Mont. 111, 116, 198 Pac. 455.

For text treatment of this subject see vol. 1 Cal. Jur. 493.

9019. Occupation under written instrument or judgment—When deemed adverse.

The term "claim of title" used in this section, relative to adverse possession, in providing that where the occupant of land entered into possession "under claim of title" etc., held to mean "color of title" which is title in appearance but not in reality, and color of title may be shown by any instrument purporting to convey the land or the right to its possession, provided claim is made thereunder in good faith. *Fitschen Bros. v. Noyes' Estate*, 76 Mont. 175, 246 Pac. 773.

Sections 9019, 9020 were cited as sections 6436, 6437, Revised Codes, in *Mouat v. Minneapolis M. & S. Co. et al.*, 68 Mont. 253, 258, 217 Pac. 342.

Grantee's right to tack adverse possession by predecessor of parcel beyond that called for by deed under which he claims, note, 46 A. L. R. 792.

For text treatment of this subject see vol. 1 Cal. Jur. 524, 570, 580; 1926 Supp. 33.

9020. What constitutes adverse possession under written instrument or judgment.

Cited in *Fitschen Bros. Com. Co. v. Noyes' Estate*, 76 Mont. 175, 195, 247 Pac. 773

Cited in *Boehler v. Boyer et al.*, 72 Mont. 472, 477, 234 Pac. 1086.

9021. Premises actually occupied under the claim of title deemed to be held adversely.

Sections 9021, 9022 were cited as sections 6438, 6439, Revised Codes, in *Mouat v. Minneapolis M. & S. Co. et al.*, 68 Mont. 253, 258, 217 Pac. 342.

9024. Adverse possession—How established.

An easement for a ditch appurtenant to land is not subject to taxation independently of the land; hence the provision of this section that adverse possession shall not be considered established unless the claimant has for the full statutory period of ten years paid the taxes upon the property claimed adversely, has no application where the subject of the adverse possession alleged is a right of way for a ditch. *Stetson v. Youngquist et al.*, 76 Mont. 600, 248 Pac. 196.

Under this section, in no case of alleged adverse possession shall such possession be considered as established unless the claimant, his predecessor and grantor shall have paid all taxes on the property for a period of ten years continuously; hence where an adverse claimant had not paid or offered to pay any taxes, the court properly found against him. *Bearmouth Placer Co. v. Passerell et al.*, 73 Mont. 306, 236 Pac. 673.

While a water right partakes of the nature of real estate, it is not such in any sense, and when considered alone and for the purpose of taxation it is personal property; therefore this section, which deals with real property and makes payment of taxes a prerequisite to the

establishment of a claim of adverse possession to such property, has no application where title by prescription to a water right, independently of the land to which it was appurtenant, is asserted. *Verwolf v. Low Line Irr. Co. et al.*, 70 Mont. 570, 227 Pac. 68.

This section, declaring that adverse possession of real property shall not be deemed established unless it shall have been occupied and claimed for a period of ten years continuously and the party claiming such possession has paid all taxes levied and assessed upon it, held prospective and not retroactive in its operation. *Verwolf v. Low Line Irr. Co. et al.*, 70 Mont. 570, 227 Pac. 68.

Since payment of taxes was not, prior to the enactment of this section, an element of adverse possession, the fact that the holder of the legal title paid the taxes on the land in question was of no evidentiary value, further than as tending to show that he had not abandoned it. *Blackfoot Land Development Co. v. Burks*, 60 Mont. 544, 199 Pac. 685.

For text treatment of this subject see vol. 1 Cal. Jur. 494.

CHAPTER 4.

LIMITATIONS OF OTHER ACTIONS.

9027. Periods of limitation prescribed.

Cited in *Gates v. Powell*, 77 Mont. 554, 557, 252 Pac. 377.

9028. Within ten years.

Cited in *Marlowe v. Missoula Gas Co. et al.*, 68 Mont. 372, 378, 219 Pac. 1111.

9029. Within eight years.

If an indorser makes payment of interest on an overdue note, the holder's right to maintain suit on the instrument is not barred under this section, if commenced within eight years after such payment. *Morgan v. Huffman*, 76 Mont. 396, 247 Pac. 326.

Applied with section 9048, holding that the defendant's presence in the state

must aggregate the full statutory period of eight years and that the period of a defendant's intermittent absence from the state must be deducted in computing such time. *Stoudt v. Hanson*, 62 Mont. 422, 205 Pac. 253.

For text treatment of this subject see vol. 16 Cal. Jur. 454; 1926 Supp. 980.

9030. Within five years.

Where the relationship of plaintiff and defendant in the acquisition of securities

was that of trustee and cestui que trust, under an express parol agreement to share

in the profits, and the former repudiated the relationship in 1912, before the sale of the securities, with the knowledge of the latter, defendant's claim for an interest in the proceeds of the transaction asserted in 1921 was barred under subdivision 1 of this section, providing that an action upon a contract, promise, etc.,

not founded on an instrument in writing must be brought within five years. *Cook v. MacGinniss*, 72 Mont. 280, 233 Pac. 129.

For text treatment of this subject see vol. 16 Cal. Jur. 465.

9031. Within three years.

An action for conversion against a sheriff and the surety on his official bond, being on a liability incurred "by the doing of an act in his official capacity and by virtue of his office," must be brought within three years under subdivision 1 of this section. *Wingate v. Davis et al.*, 77 Mont. 572, 252 Pac. 307.

An action to recover money received by defendant from her husband with knowledge that it belonged to plaintiff and that it had been taken from him by the husband by threats and intimidation,

thus constituting her a trustee *ex maleficio*, would seem to fall within the provision of subdivision 3 of this section, declaring that an action upon an obligation or liability, not founded upon an instrument in writing, other than a contract, account or promise, must be commenced within three years. *Kerrigan v. O'Meara*, 71 Mont. 1, 227 Pac. 819.

For text treatment of this subject see vol. 16 Cal. Jur. 470, 472, 476.

9032. Within two years.

Cited with section 9033 in *Butler v. Peters*, 62 Mont. 381, 385, 26 A. L. R. 560, 205 Pac. 247.

9033. Two-year limitation.

Under section 9058, the limitation of two years against an action to recover personal property by a bailor against his bailee does not commence to run until the latter refuses to return it on demand. *Gates v. Powell*, 77 Mont. 554, 252 Pac. 377.

Where plaintiff, in a claim and delivery action against his former wife to whom at the time of their separation he had loaned his household furniture, did not know of her claim of ownership until some two years and a half thereafter, when he made demand for it, his right of action did not accrue until refusal of his demand and the limitation of two years did not commence to run until then. *Viers v. Webb*, 76 Mont. 38, 245 Pac. 257.

In order to make applicable the provision of subdivision 4 of this section, that in an action for fraud the cause of action shall not be deemed to have accrued until discovery by plaintiff of the facts constituting the fraud, plaintiff must show, in the absence of a relation of trust or confidence between the parties which imposed upon defendant the duty of making a full disclosure of the facts, some active affirmative concealment of the fraud by defendant, something said or done to continue the deception or to prevent inquiry or discovery, else the running of the statute which limits the time within which the action may be brought to two years is not postponed.

Kerrigan v. O'Meara, 71 Mont. 1, 227 Pac. 819.

One who relies on the exception to the provision of this section, to the effect that while an action for fraud must be commenced within two years, the cause of action shall not be deemed to have accrued until discovery of the facts constituting the fraud, must show the time and the circumstances of the discovery, to enable the court to determine whether by ordinary diligence it might not have been made before, his simple statement that it was not made until the limitation had run being insufficient. *Kerrigan v. O'Meara*, 71 Mont. 1, 227 Pac. 819.

In an action in claim and delivery to recover possession of a cow picked up by defendant and later in good faith purchased from one claiming to be but who was not the owner, defendant not having done anything to prevent the true owner from ascertaining the whereabouts of the animal and learning of his right of action, the fact that plaintiff was ignorant of the circumstances which would have enabled him to bring timely suit did not entitle him to sue after the limitation of two years fixed by subdivision 3 of this section had run. *Bennett v. Meeker*, 61 Mon. 307, 202 Pac. 203.

This section, subdivision 4, providing that an action for fraud or mistake must be brought within two years after discovery of the facts, applies only to actions for fraud or mistake within the

common acceptance of those terms, and not to an action in claim and delivery where defendant honestly and in good faith bought an estray from one wrongfully claiming to be the owner of the animal. *Bennett v. Meeker*, 61 Mont. 307, 202 Pac. 203.

This and section 9040 were cited as

sections 6449-6451, Revised Codes, in *In re Smith's Estate*, 60 Mont. 276, 289, 199 Pac. 696; as section 6449, Revised Codes, in *Terry v. Stephens*, 60 Mont. 82, 84, 198 Pac. 360.

For text treatment of this subject see vol. 16 Cal. Jur. 439, 445-454, 473.

9036. Period for commencement of actions by members of police department to recover salaries.

Sections 9036, 9037, providing that actions by police officers for the recovery of salaries must be commenced within six months after the cause of action shall have accrued, etc., are not open to the objection that they do not come within the purview of the governor's proclamation calling the session, his reference therein to certain conditions prevailing in the "department of police" in a named city covering the subject of the legisla-

tion. *Sweeney v. City of Butte*, 64 Mont. 230, 208 Pac. 943.

Since a police officer's cause of action for recovery of two years' back salary did not accrue until it had been judicially determined in a mandamus proceeding that he had been wrongfully ousted, the limitation of six months prescribed by this section did not commence to run until rendition of judgment in the mandamus proceeding. *Sweeney v. City of Butte*, 64 Mont. 230, 208 Pac. 943.

9037. Actions for unpaid salaries of members of police department limited to services actually performed, etc.

This section, providing in effect that a policeman wrongfully discharged may not recover back salary except for services actually performed, and one unlawfully suspended or placed on the eligible list can recover only for the days upon which he reported for duty, though broad enough in a literal sense to comprehend pending actions, was not intended, in the absence of express words so declaring, to act retrospectively so as to cut off existing rights, but was intended to apply only to policemen so discharged, suspended or relegated to the eligible list after its enactment. *Sullivan v. City of Butte*, 65 Mont. 495, 211 Pac. 301.

The provision of this section that a police officer can recover salary only for

services actually rendered, did not apply where he was unlawfully discharged and, though offering to perform them, was thereafter prevented from so doing, since the city could not take advantage of its own wrong. *Sweeney v. City of Butte*, 64 Mont. 230, 208 Pac. 943.

Where a police officer was discharged contrary to the provisions of the Metropolitan Police Law, and not suspended or placed on the eligible list, this section, providing that where a member of the police force was suspended or placed on the eligible list he can only recover salary for the days he reports for duty, has no application. *Sweeney v. City of Butte*, 64 Mont. 230, 208 Pac. 943.

9041. Actions for relief not hereinbefore provided for.

Cited in *Cook v. MacGinniss*, 72 Mont. 280, 290, 233 Pac. 129; as section 6451,

Revised Codes, in *In re Smith's Estate*, 60 Mont. 276, 289, 199 Pac. 696.

CHAPTER 5.

GENERAL PROVISIONS RELATING TO THE TIME OF COMMENCEMENT OF ACTIONS.

9047. When an action is commenced.

Cited in *Gillespie v. Great Northern Ry. Co.*, 63 Mont. 598, 608, 208 Pac. 1059.

9048. Exception, where defendant is out of the state.

Evidence held not to sustain the contention that the running of the statute of limitations had been tolled, under this section, by reason of the absences from

the state of the party pleading it. *Cook v. MacGinniss*, 72 Mont. 280, 233 Pac. 129.

Under this section, where defendant

in an action on a promissory note is out of the state at the time the cause of action accrued, the bar of the statute of limitation does not commence to run until after his return, and if he thereafter intermittently leaves and returns to the jurisdiction, the time of his absence must be deducted from the limitation of eight years fixed by section 9029, in order to determine whether the full period has

expired, i. e., defendant's presence in the state must aggregate the full statutory period to constitute a bar. *Stoudt v. Hanson*, 62 Mont. 422, 205 Pac. 253.

Absence as suspending or removing bar of limitations as against judgment, note, 21 A. L. R. 1039.

For text treatment of this subject see vol. 16 Cal. Jur. 552.

9054. Provision where judgment has been reversed.

This section, extending the time fixed by the general statutes of limitations for the commencement of the ordinary actions for specified reasons, has no application to a cause of action for which a special limitation period is prescribed, i. e., one where the time within which suit must be brought is a condition attached to the right to sue. *King v. Mayor of City of Butte*, 71 Mont. 309, 230 Pac. 62.

This section, allowing a new action within one year after the termination of the first action by dismissal for want of jurisdiction, does not apply to a second

action commenced before, and not after the termination of the first action by such dismissal. *Gilmore v. Gilmore*, 270 Fed. 260.

This section applies to actions on claims against an administratrix although such actions are limited by section 10178, which is a special probate statute, and are not subject to the general statute of limitations. *Gilmore v. Gilmore*, 270 Fed. 260.

For text treatment of this subject see vol. 16 Cal. Jur. 562.

9058. When demand necessary.

Under this section, the limitation of two years against an action to recover personal property (sec. 9033), by a bailor against his bailee does not commence to run until the latter refuses to return it on demand. *Gates v. Powell*, 77 Mont. 554, 252 Pac. 377.

When limitation commences to run against action to recover deposit of

property without definite date for its return, or damages for its detention, note, 47 A. L. R. 178.

When statute of limitation begins to run against note payable on demand, note, 44 A. L. R. 397.

Necessity for demand to set statute of limitations running against action on certificate of deposit, note, 23 A. L. R. 7.

9061. Limitations prescribed in action against directors, etc.

Construing this section, an action against a director to enforce his statutory liability for failure of his corporation to file its annual statement must be brought within three years after the liability was created by law, and not within three years after the aggrieved party discovered the fact with relation thereto.

Williams v. Hilger et al., 77 Mont. 399, 251 Pac. 524.

Cited in *First National Bank of Plains v. Barto et al.*, 72 Mont. 437, 233 Pac. 963.

For text treatment of this subject see vol. 6 Cal. Jur. 1011; vol. 16 Cal. Jur. 475, 528.

CHAPTER 6.

PARTIES TO CIVIL ACTIONS.

9067. Action to be in name of party in interest.

In an action for an accounting and to have defendant bank declared trustee of a resulting trust, held under the rule that findings made on conflicting evidence will be set aside only where the evidence preponderates against them, that the finding that plaintiff's husband, and not she, was the real party in interest was correct,

and that therefore the court properly rendered judgment in favor of defendant under this section. *Kelly v. Gullickson*, 75 Mont. 66, 241 Pac. 623.

Plaintiff, vested with the legal title to the judgment on which he sought to recover, was the real party in interest within the meaning of this section, and

evidence that he had bought it for the benefit of another was properly excluded. *Genzberger v. Adams*, 62 Mont. 430, 205 Pac. 658.

Cited in *LaBonte v. Mutual Fire etc. Ins. Co.*, 75 Mont. 1, 11, 241 Pac. 631; *Gregg v. Bayers*, 73 Mont. 165, 168, 235 Pac. 337; *Lefebure et al. v. Baker et al.*,

69 Mont. 193, 200, 220 Pac. 1111; *County of Wheatland v. Van et al.*, 64 Mont. 113, 116, 207 Pac. 1003; *Rummey et al. v. Skinner*, 64 Mont. 75, 82, 208 Pac. 895.

For text treatment of this subject see vol. 20 Cal. Jur. 486.

9068. Assignment of thing in action not to prejudice defense.

Where the assignee of a non-negotiable note fails to notify the maker of the assignment, and thereafter the maker makes payment to the payee (assignor) without knowledge of the assignment, the payment constitutes a complete defense to a suit by the assignee against the maker. *Erlandson v. Erskine et al.*, 76 Mont. 537, 248 Pac. 209.

Cited as section 6478, Revised Codes, in *Rice v. Chicago etc. Ry. Co.*, 59 Mont. 570, 583, 197 Pac. 999.

For text treatment of this subject see vol. 3 Cal. Jur. 287; vol. 23 Cal. Jur. 265.

9070. Wife may defend, when.

Under this section, providing that if a husband and wife be sued together the wife may defend for her own right, and if the husband neglects to defend, she may defend for his right also, a wife, pending suit for divorce brought by her, had authority to employ counsel on be-

half of her husband, in a suit for partition against both of them in which he had failed to appear. *Buckhouse v. Parsons*, 60 Mont. 156, 198 Pac. 443.

For text treatment of this subject see vol. 13 Cal. Jur. 891.

9071. Infant, etc., to appear by guardian.

Cited in *Maloney v. Schandelmier*, 65 Mont. 531, 534, 212 Pac. 493.

9072. Guardian—How appointed.

Cited in *Maloney v. Schandelmier*, 65 Mont. 531, 534, 212 Pac. 493.

9075. Father, etc., may sue for injury or death of child.

Cited in *Liston v. Reynolds*, 69 Mont. 480, 500, 223 Pac. 507.

9076. When representative may sue for death of one caused by the wrongful act of another.

In an action against an administrator brought under this section, for damages for the wrongful killing of plaintiff's husband by defendant's intestate, where plaintiff was the only surviving witness and her testimony was indispensable to recovery, the court, in its discretion properly permitted her to testify under the exception to the general rule (sec. 10535), making such testimony inadmissible, the exception providing that where by its exclusion injustice will be done the testimony may be admitted. *Anderson et al. v. Wirkman*, 67 Mont. 176, 215 Pac. 224.

The right of action for damages given by this section to the heirs or personal representative of an adult whose death is caused by wrongful act or negligence is solely for the benefit of the heirs, the

representative merely acting as their trustee and the amount recovered not being a part of decedent's estate; hence the complaint of an administrator setting forth the damages sustained by decedent's father and mother was not open to demurrer on the ground of misjoinder of parties plaintiff (the administrator and the heirs) or causes of action, recovery by the administrator barring a subsequent action by the heirs. *Batchoff v. Butte Pacific Copper Co.*, 60 Mont. 179, 198 Pac. 132.

Cited in *Liston v. Reynolds*, 69 Mont. 480, 500, 223 Pac. 507; *Bruce v. McAdoo*, 65 Mont. 275, 289, 211 Pac. 772.

For text treatment of this subject see vol. 8 Cal. Jur. 952.

9077. Who may be joined as plaintiffs.

Cited in *Frost et al. v. Long & Co. et al.*, 66 Mont. 385, 393, 213 Pac. 1107; *Rumney et al. v. Skinner*, 64 Mont. 75, 82, 208 Pac. 895.

9078. Who may be joined as defendants.

Cited as section 6488, Revised Codes, in *Comeford v. U. S. F. & G. Co.*, 59 Mont. 243, 252, 196 Pac. 984.

9083. Parties in interest—When to be joined—When one or more may sue or defend for the whole.

Cited as section 6491, Revised Codes, in *Comeford v. U. S. F. & G. Co.*, 59 Mont. 243, 252, 196 Pac. 984.

9084. Plaintiff may sue in one action for the different parties to commercial paper.

In an action on a bond executed jointly by the principal and a surety company it was optional with plaintiff to proceed against either or both of the obligors, but where it was also sought to reform the contract and the surety moved that the principal be served with process, it was

error to deny the motion. *Comeford v. U. S. F. & G. Co.*, 59 Mont. 243, 196 Pac. 984.

For text treatment of this subject see vol. 19 Cal. Jur. 971; vol. 20 Cal. Jur. 505; vol. 23 Cal. Jur. 1055.

9086. Action—When not to abate by death, marriage or other disability—Proceedings in such case.

That plaintiff's land was sold on foreclosure after his action for damages was brought under sections 6902-6904, and the period of redemption had expired prior to retrial of the case, did not result in the abatement of the action under this section. *Solberg v. Sunburst Oil & Gas Co.*, 76 Mont. 254, 246 Pac. 168.

The latter portion of this section, which indicates the person who may commence the action declared by the fore part thereof not to abate by death, or to continue it if commenced before the death of the party defendant, is adjective law. *Anderson et al. v. Wirkman*, 67 Mont. 176, 215 Pac. 224.

A cause of action in favor of one whose death results from the wrongful act of another, under this section (a general survival statute), survives the death of the wrongdoer as well as the death of the party whose rights were infringed.

Anderson et al. v. Wirkman, 67 Mont. 176, 215 Pac. 224.

Cited in *Price et al. v. Skylstead*, 69 Mont. 453, 461, 222 Pac. 1059; *Bruce v. McAdoo*, 65 Mont. 275, 289, 211 Pac. 772.

Death of beneficiary as affecting right of action under death statute, note, 13 A. L. R. 225.

Survival of action or cause of action for alienation of affections or criminal conversation, notes, 14 A. L. R. 693; 24 A. L. R. 488.

Death of principal defendant as abating or dissolving garnishment or attachment, note, 21 A. L. R. 272.

Survival of action or cause of action for breach of contract to marry, note, 34 A. L. R. 1363.

For text treatment of this subject see vol. 1 Cal. Jur. 49 et seq.

9087. Another person may be substituted for the defendant.

Demand upon a foreign corporation for security for costs made by one of two defendants pursuant to this section, did not operate to stay proceedings between plaintiff and the nondemanding defendant. *Middle States O. Corp. v. Tanner-Jones Co.*, 73 Mont. 180, 235 Pac. 770.

In an action of interpleader to compel conflicting claimants to funds in the pleader's hands sued upon, to litigate their claims among themselves, the sum

due from him must not be in controversy—he must be a disinterested stakeholder, else he is not entitled to maintain interpleader. *Security State Bank of Roy v. Melchert et al.*, 67 Mont. 535, 216 Pac. 340.

A cross-complaint filed by defendant as part of his answer held not susceptible of interpretation as a complaint in interpleader, in the absence of compliance with this section, requiring that defend-

ant before answering file the affidavit provided for or apply for an order substituting attaching creditors in his place; held, further, that the pleading was insufficient to bring it within the concluding part of the section, which, under a different set of circumstances, provides for an original action against the claimants to compel them to interplead and litigate their several claims among them-

selves. *Security State Bank of Roy v. Melchert et al.*, 67 Mont. 535, 216 Pac. 340.

Cited in *State v. Banking Corp. of Montana*, 74 Mont. 491, 508, 241 Pac. 626.

For text treatment of this subject see vol. 14 Cal. Jur. 701.

9088. Intervention—When it takes place and how made.

The purpose of this section, permitting a person to intervene in an action between others if his interest be such that he would be prejudicially affected as a necessary consequence of the determination of the action without his presence as a party to it, is to avoid circuity of action and needless multiplicity of suits. *State Bank of Outlook v. Sheridan County*, 72 Mont. 1, 230 Pac. 1097.

Where a complaint in intervention is adverse to both parties in which filed, both are considered as defendants as respects the intervener, and they must plead to the complaint as defendants in an ordinary action. *State Bank of New Salem v. Schultze*, 63 Mont. 410, 209 Pac. 599.

Where defendants in an action to set aside a fraudulent conveyance failed to answer a complaint in intervention which injected an entirely new issue into the case which defendant could not have anticipated at the time of filing her answer in the case originally brought, judg-

ment by default in favor of the intervener was proper. *State Bank of New Salem v. Schultze*, 63 Mont. 410, 209 Pac. 599.

Under this section, refusal to permit a party to intervene is error where such party makes a prima facie showing of interest in the subject matter of the litigation. *Equity Co-operative Assn. v. Milling Co.*, 63 Mont. 26, 206 Pac. 349.

Under this section, intervention is permissible in any case, provided only the person seeking to intervene can show either an interest in the subject matter of the action, or an interest in the success of either of the parties, or an interest in the subject matter as against both. *Stack v. Coyle*, 59 Mont. 444, 197 Pac. 747.

Cited in *Security State Bank of Roy v. Melchert et al.*, 67 Mont. 535, 543, 216 Pac. 340.

For text treatment of this subject see vol. 20 Cal. Jur. 515 et seq.

9089. Associates may be sued by name of association.

This section, providing that where two or more persons are transacting business under a common name they may be sued under such name, held applicable to a partnership. *Gardiner v. Eclipse Grocery Co.*, 72 Mont. 540, 234 Pac. 490.

Cited in *State v. Yegen*, 74 Mont. 126, 138, 238 Pac. 603.

For text treatment of this subject see vol. 20 Cal. Jur. 765, 768, 774.

9090. When other parties must be brought in.

Cited in *Security State Bank of Roy v. Melchert et al.*, 67 Mont. 535, 543, 216 Pac. 340.

CHAPTER 7.

PLACE OF TRIAL OF CIVIL ACTIONS.

9094. Other actions—Where the cause or some part thereof arose.

Under this section, subdivision 2, a public officer (sheriff) sued in his official capacity is entitled to have the case tried in the county of which he is such officer. *State ex rel. Davis v. District Court et al.*, 72 Mont. 56, 231 Pac. 395.

For text treatment of this subject see vol. 20 Cal. Jur. 289; vol. 21 Cal. Jur. 914; vol. 25 Cal. Jur. 867.

9096. Other actions, according to the residence of the parties.

Where a contract of sale of personal property provides that payment shall be made in a county other than the one in which action is commenced, the defendant is entitled to a change of venue to that county, but where it does not so provide, the presumption is that payment is to be made at the creditor's residence or place of business and the action is triable in his county. *Courtney v. Gordon*, 74 Mont. 408, 241 Pac. 233.

The venue of an action for the breach of an agreement by the hirer of a piano to return it in case it should not prove satisfactory was in the county of the owner's residence, the place where it was to be performed. *Stiemke v. Jankovich et al.*, 72 Mont. 363, 233 Pac. 904.

Under this section, an action for tort must be tried in the county in which it was committed; hence an action by a railroad employee for personal injuries sustained in a county other than that of his residence, was properly triable in the county where the accident occurred,

subject to the power of the court to change the place of trial. *Dryer v. Director-General of Railroads*, 66 Mont. 298, 213 Pac. 210.

Under this section, refusal to change the place of trial of an action on a contract from the county of plaintiff's residence to the county in which the contract was to be performed was error. *Feldman v. Security State Bank*, 62 Mont. 330, 206 Pac. 425.

Cited in *Silver v. Morin*, 74 Mont. 398, 402, 240 Pac. 825; *Atkinson v. Bonners Ferry Lumber Co.*, 74 Mont. 393, 397, 240 Pac. 823.

Sections 9096, 9097, were cited in *State ex rel. Carroll v. District Court*, 69 Mont. 415, 422, 222 Pac. 444.

Venue of action for libel in newspaper, note, 37 A. L. R. 908.

For text treatment of this subject see vol. 16 Cal. Jur. 75; vol. 25 Cal. Jur. 864-867.

9097. Actions may be tried in any county, unless the defendant demands a trial in the proper county.

A defendant seeking a change of place of trial under sections 9097 and 9098, must, first, file an affidavit of merits and a demand in writing; second, apply to or move the court for an order changing the place of trial; in the absence of an agreement of the parties, these requirements are indispensable and imperative. *O'Hanion v. Great Northern Ry. Co.*, 76 Mont. 128, 245 Pac. 518.

A motion for change of place of trial must be made upon notice to the plaintiff, unless such notice is waived; it need not be filed simultaneously with the affidavit of merits and demand but must be filed and served within a reasonable time thereafter—the movant must proceed with diligence. *O'Hanion v. Great Northern Ry. Co.*, 76 Mont. 128, 245 Pac. 518.

Sections 9097 and 9098, providing for change of venue, are companion measures and must be construed together. Under the first, the applicant must file an affidavit of merits and demand in writing for the change. Under the second he must apply to the court for an order to change the place. In the absence of an agreement of the parties these separate steps are imperative. Defendant filed the affidavit and with it a notice of motion and motion but did not file a demand in writing. Held, on application for writ of supervisory control, that a demand for the change was indispensable and that in its absence the court properly denied

the motion. *State ex rel. Davis v. District Court et al.*, 72 Mont. 56, 231 Pac. 395.

Where defendant correctly pursues the statute in his endeavor to secure a change of place of trial and is entitled to such change but is denied it, he has a remedy by appeal. (Language appearing in *Feldman v. Security State Bank*, 62 Mont. 330, at bottom of page 334, intimating otherwise, expressly disapproved.) *State ex rel. Davis v. District Court et al.*, 72 Mont. 56, 231 Pac. 395.

Where defendant in a mandamus proceeding in his motion to quash the writ for want of jurisdiction, also asked for further time in which to demur or answer, he thereby entered his general appearance and thus waived his right to demand a change of venue to the proper county. *State ex rel. Carroll v. District Court*, 69 Mont. 415, 222 Pac. 444.

The demand for a change of place of trial referred to in this section does not supply the place of a motion on the part of the defendant for a change of venue. *Danielson v. Danielson*, 62 Mont. 83, 203 Pac. 506.

Cited in *Courtney v. Gordon*, 74 Mont. 408, 413, 241 Pac. 233; *Atkinson v. Bonners Ferry Lbr. Co.*, 74 Mont. 393, 397, 240 Pac. 823.

For text treatment of this subject see vol. 25 Cal. Jur. 889 et seq.

9098. Place of the trial may be changed in certain cases.

In an action for false imprisonment commenced in a county other than the one in which the tort was alleged to have been committed, held that the district court abused its discretion in denying defendant's motion for change of venue asked for on the ground of the convenience of witnesses and the promotion of justice, under this section, on affidavits showing, among other things, that a large number of its witnesses residing in Idaho a short distance from the county seat of the county to which it was proposed to have the cause removed, would attend the trial, but would decline to attend if held in the county in which the action was brought, some 340 miles distant, etc., no affidavits being filed in opposition; held, further, that irrespective of company's showing in support of the motion as made, it was entitled to the change of place of trial, under section 9096, to the county where the alleged tort was committed. *Atkinson v. Bonners Ferry Lumber Co.*, 74 Mont. 393, 240 Pac. 823.

Where one district judge invites another from a different district to hold court for him and the invitation is accepted, the invited judge when he appears, and while he presides, has all the

authority of the local judge. *Rowan v. Gazette Printing Co.*, 69 Mont. 170, 220 Pac. 1104.

Since the district court can only act upon motion in the matter of changing the place of trial, it is the duty of defendant desiring a change of venue on the ground that the county in which the action was brought was not the county of his residence, under this section, to make a motion to that effect, the demand for such change referred to in section 9097 not supplying the place of such motion. *Danielson v. Danielson*, 62 Mont. 83, 203 Pac. 506.

One seeking to change the place of trial to the county of his residence must present his motion and the evidence of his residence, at the time of first appearance when the answer or demurrer is filed. If not so presented at that time his right to a change of venue is waived. *Danielson v. Danielson*, 62 Mont. 83, 203 Pac. 506.

Applied with section 9097 in *O'Hanion v. Great Northern Ry. Co.*, 76 Mont. 128, 245 Pac. 518.

For text treatment of this subject see vol. 25 Cal. Jur. 876 et seq.

9102. Change of place of trial on agreement of parties.

Confession of a motion for change of venue is tantamount to a stipulation for a change, and under this section, where the parties stipulate to that effect, the district court must order the change to

the county agreed upon. *State ex rel. Bonners Ferry Lbr. Co. v. District Court*, 74 Mont. 338, 240 Pac. 388.

Cited in *O'Hanion v. Great Northern Ry. Co.*, 76 Mont. 128, 135, 245 Pac. 518.

CHAPTER 8.**MANNER OF COMMENCING CIVIL ACTIONS—SERVICE OF SUMMONS.****9105. Actions—How commenced.**

Cited in *Gates v. Powell*, 77 Mont. 554, 558, 252 Pac. 377; *Dreidlein v. Manger*, 69 Mont. 155, 166, 220 Pac. 1107.

9107. Summons—How issued, and what to contain.

After summons is issued correctly in compliance with this section, no other summons, save an alias summons, may issue, and the latter only upon a showing that the statutory exigency exists and that the requirements of the statute have been met. *State ex rel. Bonners Ferry Lbr. Co. v. District Court*, 74 Mont. 338, 240 Pac. 388.

Cited in *Edenfield v. Seal Co., Inc.*, 74 Mont. 509, 513, 241 Pac. 227; as section 6615, Revised Codes, in *Munger v. Nelson*, 61 Mont. 104, 107, 201 Pac. 286.

For text treatment of this subject see vol. 21 Cal. Jur. 483.

9108. Alias summons—Manner and time of issuing.

Cited in *State ex rel. Bonners Ferry Lbr. Co. v. District Court*, 74 Mont. 338, 343, 240 Pac. 388.

9110. Summons—How served and returned.

Sections 9110, 9111 were cited in *Hoppin v. Long*, 74 Mont. 558, 574, 241 Pac. 636; *State ex rel. Kelly v. District Court et al.*, 73 Mont. 84, 90, 235 Pac. 751.

9111. Summons—How served.

Cited in *Hoppin v. Long*, 74 Mont. 558, 576, 241 Pac. 636; *Rothrock v. Bauman et al.*, 73 Mont. 401, 404, 236 Pac. 1077.

9112. Service of summons on certain corporations—Made on secretary of state.

In an action against a domestic corporation an affidavit for an order of substituted service of summons by the secretary of state or his assistant is sufficient if it discloses that the president or other head of the corporation, secretary, cashier or managing agent thereof cannot be found. *Rothrock v. Bauman et al.*, 73 Mont. 401, 236 Pac. 1077.

The affidavit for substituted service of summons required by this section need not recite that plaintiff's cause of action arose within this state. *Rothrock v. Bauman et al.*, 73 Mont. 401, 236 Pac. 1077.

Where substituted service of summons upon a corporation was properly made on the deputy secretary of state in the absence of the secretary himself, and that officer did what he was required to do in

the premises, the fact that the clerk in issuing the order for the substituted service directed that it be made upon the secretary of state or upon his deputy, instead of upon the secretary or "in his absence from his office" upon the deputy in conformity with the requirement of this section did not render the order invalid so as to deprive the court of jurisdiction to render judgment by default. *Rothrock v. Bauman et al.*, 73 Mont. 401, 236 Pac. 1077.

Absence of a statement in an affidavit for substituted service of summons that plaintiff has a good cause of action on the merits, does not render it insufficient. *Rothrock v. Bauman et al.*, 73 Mont. 401, 236 Pac. 1077.

9114. Duty of secretary of state.

Cited in *Rothrock v. Bauman et al.*, 73 Mont. 401, 406, 236 Pac. 1077.

9115. Service to be deemed personal.

Cited in *Rothrock v. Bauman et al.*, 73 Mont. 401, 405, 236 Pac. 1077.

9117. Publication of summons.

Cited in *Hoppin v. Long*, 74 Mont. 558, 574, 241 Pac. 636.

Cited in *Rothrock v. Bauman et al.*, 73 Mont. 401, 405, 236 Pac. 1077.

9118. Manner of publication.

Where, after the making of an order for publication of summons upon a non-resident defendant, the summons is personally served under this section, the service does not become complete until the day on which the fourth publication would have been made if plaintiff had proceeded under the order of publication,

and the date of personal service is considered the date of the first publication for the purpose of computing the time of service. *Reynolds v. Gladys Belle Oil Co.*, 75 Mont. 332, 243 Pac. 576.

For text treatment of this subject see vol. 21 Cal. Jur. 517-519.

9119. What summons for publication to contain.

Cited in *MacGinniss Realty Co. v. Hinderager*, 63 Mont. 172, 182, 206 Pac. 436.

9121. Proceedings when only part of the defendants are served.

Cited in *O'Hanion v. Great Northern Ry. Co.*, 76 Mont. 128, 141, 245 Pac. 518.

9122. Proof of service—How made.

Cited as section 6525, Revised Codes, in *Gilliland v. Palatine Ins. Co., Ltd.*, 59 Mont. 267, 269, 196 Pac. 151.

9124. Return of summons.

Cited in *Reynolds v. Gladys Belle Oil Co.*, 75 Mont. 332, 345, 243 Pac. 576.

CHAPTER 9.

PLEADINGS IN GENERAL.

9127. What pleadings are allowed.

Cited in *Hall v. Hall*, 70 Mont. 460, 466, 226 Pac. 469.

CHAPTER 10.

THE COMPLAINT.

9129. Complaint—What to contain.

A complaint stating the facts constituting a contract imposing a duty upon defendant, its breach and resulting damages, in ordinary and concise language, is sufficient under this section and proof against a general demurrer. *Borgeas v. Oregon Short Line Ry. Co.*, 73 Mont. 407, 236 Pac. 1069.

In a complaint for an injunction, the bare statement that the plaintiff has no plain, speedy and adequate remedy at law is no more than the averment of a conclusion and is therefore insufficient. *State ex rel. Stephens v. Zuck et al.*, 67 Mont. 324, 215 Pac. 806.

Cited in *Gravelin v. Porier et al.*, 77 Mont. 260, 280, 250 Pac. 823; *Callan v. Hample*, 73 Mont. 321, 324, 236 Pac. 550;

as section 6532, Revised Codes, in *McManus v. Butte Electric Ry. Co.*, 68 Mont. 379, 389, 219 Pac. 241; *Davis v. Freisheimer*, 68 Mont. 322, 323, 219 Pac. 236; *Union Bank & Trust Co. v. Himmelbauer*, 68 Mont. 42, 45, 216 Pac. 791; *Griffin v. Chicago etc. Ry. Co.*, 67 Mont. 386, 392, 216 Pac. 765; *Samuell v. Moore Mercantile Co. et al.*, 62 Mont. 232, 236, 204 Pac. 376; *Kozasa v. Northern Pacific Ry. Co. et al.*, 61 Mont. 233, 234, 201 Pac. 682; *Boyle v. Chicago etc. Ry. Co.*, 60 Mont. 453, 458, 199 Pac. 283; *Stricklin Chicago etc. Ry. Co.*, 59 Mont. 367, 370, 197 Pac. 839.

For text treatment of this subject see vol. 21 Cal. Jur. 39, 57-59, 66.

9130. What causes of action may be joined.

Under this section, causes of action may be united only when they affect all the parties to the action; hence where one of two causes of action affected only one of several defendants, there was a misjoinder and the court erred in overruling a special demurrer to the complaint based on that ground. *Baker v. Hanson et al.*, 72 Mont. 22, 231 Pac. 902.

Under this section, providing that several causes of action arising out of "injuries to property" may be united in the same complaint, causes of action for damages to real and personal property may properly be united. *Weibush et al. v. Jefferson Canal Co.*, 68 Mont. 586, 220 Pac. 99.

Under this section, and the rule that a separate liability of the principal cannot be joined in an action on the bond against the surety, an action by a county against its assessor to recover from him money lost to it by reason of his wilful failure and neglect to assess property,

was improperly joined with an action against a surety company on the official bond of that officer. *County of Silver Bow v. Kelly et al.*, 68 Mont. 194, 216 Pac. 1106.

Under this section, a cause of action for damages for injuries suffered by the owner of real property personally by way of annoyance, discomfort, etc., may not be united with one for damages occasioned to the property itself by its depreciation in value because of the maintenance of a nuisance. *Lennon et al. v. City of Butte*, 67 Mont. 101, 214 Pac. 1101.

This section, requiring plaintiff to separately state and number his causes of action, and a motion to so separately state and number, do not refer to imperfect statements of causes of action but to causes of action that are proof against a demurrer for substance. *Thwing v. Weiser et al.*, 65 Mont. 28, 210 Pac. 750.

Cited in *Borgeas v. Oregon Short Line Ry. Co.*, 73 Mont. 407, 414, 236 Pac. 1069.

For text treatment of this subject see vol. 1 Cal. Jur. 352 et seq.

CHAPTER 11.

DEMURRER TO COMPLAINT.

9131. When derendant may demur.

Want of legal capacity to sue for which, under this section, defendant may interpose a special demurrer to the complaint, means some legal disability of the plaintiff, such as infancy, coverture, idiocy, etc., and does not refer to the absence of facts sufficient to constitute a cause of action or to plaintiff's relation to the subject matter of litigation. *Lefebure et al. v. Baker et al.*, 69 Mont. 193, 220 Pac. 1111.

Lack of legal capacity in plaintiff to sue, when apparent on the face of the complaint, can be questioned only by demurrer, and when not so apparent the objection may be taken by answer; if not so taken advantage of, it is deemed waived. *Northwestern Hardware & S. Co. v. Winnett*, 67 Mont. 545, 216 Pac. 568,

The objection that causes of action are not separately numbered cannot be raised

by demurrer. The proper remedy is a motion to make the complaint more definite and certain by separately stating the causes of action. *Jorud v. Woodside*, 63 Mont. 23, 206 Pac. 344.

A complaint to be proof against a special demurrer, ought at least to be sufficiently definite and certain to be on its face a bar to another suit on the same cause of action. *Smallhorn v. Freeman*, 61 Mont. 137, 201 Pac. 567.

Cited in *La Bonte v. Mutual Fire etc. Ins. Co.*, 75 Mont. 1, 11, 241 Pac. 631; *Stoffels v. Cherry*, 67 Mont. 443, 445, 215 Pac. 1098; *Adams v. Durfee et al.*, 67 Mont. 315, 318, 215 Pac. 664; *Frost et al. v. Long & Co. et al.*, 66 Mont. 385, 391, 213 Pac. 1107.

For text treatment of this subject see vol. 21 Cal. Jur. 98-108.

9132. Demurrer must specify, etc.

Where a misjoinder of parties defendant is patent upon the face of the complaint, the defect can be availed of only by special demurrer, failure to interpose which waives it. *Schauer v. Morgan et al.*, 67 Mont. 455, 216 Pac. 347.

Cited in *Morrison v. Concordia Fire Ins. Co. et al.*, 72 Mont. 97, 99, 231 Pac. 905; *Lefebure et al. v. Baker et al.*,

69 Mont. 193, 199, 220 Pac. 1111; *Grant v. Nihill*, 64 Mont. 420, 435, 210 Pac. 914; as section 6535, Revised Codes, in *Boyle v. Chicago etc. Ry. Co.*, 60 Mont. 453, 458, 199 Pac. 283.

For text treatment of this subject see vol. 21 Cal. Jur. 112.

9134. Amended complaints—Answer.

Where the amended complaint in an action for divorce added a new count, the allegations of which were not denied by the answer to the original complaint, it was incumbent upon the defendant to answer or demur anew, failing in which

his default was properly entered. *Danielson v. Danielson*, 62 Mont. 83, 203 Pac. 506.

For text treatment of this subject see vol. 21 Cal. Jur. 223, 225, 229.

9135. Objection not appearing on complaint may be taken by answer.

Sections 9135, 9136 were cited in *La Bonte v. Mutual Fire etc. Ins. Co.*, 75 Mont. 1, 11, 241 Pac. 631; *Northwestern Hardware & S. Co. v. Winnett*, 67 Mont. 545, 550, 216 Pac. 568; *Frost et al. v.*

Long & Co. et al., 66 Mont. 385, 392, 213 Pac. 1107.

For text treatment of this subject see vol. 21 Cal. Jur. 95, 130.

9136. Objections—When deemed waived.

Where it does not appear from the face of the complaint that plaintiff is not the real party in interest, the defect can only be reached by answer and is waived by failure so to plead. *La Bonte v. Mutual Fire Ins. Co.*, 75 Mont. 1, 241 Pac. 631.

In view of this section, where an official bond was conditioned on defendants taking an appeal to the supreme court, an action thereon which failed to aver that no appeal was taken was fatal to the existence of the cause of action, and

the right to recover thereon was entirely destroyed where plaintiff affirmatively averred such appeal was in fact taken, and such defects going to sufficiency of the complaint to state a cause of action were not cured by findings of court. *U. S. Fidelity & Guaranty Co. v. Whitaker*, 8 Fed. (2d) 455.

Cited in *Lefebure et al. v. Baker et al.*, 69 Mont. 193, 199, 220 Pac. 1111; *Schauer v. Morgan et al.*, 67 Mont. 455, 463, 216 Pac. 347; *Northwestern Hardware & S.*

Co. v. Winnett, 67 Mont. 545, 550, 216 Pac. 568; *Frost et al. v. Long & Co. et al.*, 66 Mont. 385, 392, 213 Pac. 1107; *Grant v. Nihill*, 64 Mont. 420, 435, 210 Pac. 914; *Doane v. Marquisee*, 63 Mont. 166, 170, 206 Pac. 420; *Puckett v. Hopkins et al.*, 63 Mont. 137, 139, 206 Pac. 442.

For text treatment of this subject see vol. 21 Cal. Jur. 267 et seq.

CHAPTER 12.

ANSWER.

9137. Answer—What to contain.

The effect of a general denial is to cast upon the plaintiff the burden of establishing *prima facie* at least, the presence of every element necessary to a recovery. *Swords v. Occident Elevator Co.*, 72 Mont. 189, 232 Pac. 189.

An agreement of accord and satisfaction in order to be available in defense, must

be specially pleaded. *Nelson v. Young et al.*, 70 Mont. 112, 224 Pac. 237.

Cited in *In re Griggs*, 74 Mont. 373, 375, 240 Pac. 820; *Security State Bank of Roy v. Melchert et al.*, 67 Mont. 535, 538, 216 Pac. 340.

For text treatment of this subject see vol. 21 Cal. Jur. 131.

9138. Counterclaim defined.

A counterclaim must be in existence and matured at the time of the commencement of the action in which it is pleaded; therefore where a counterclaim was based upon a contract which had been superseded by a subsequent one, the court properly excluded testimony offered in support of it. *Dick v. King*, 73 Mont. 456, 236 Pac. 1093.

Under subdivision 2 of this section, a counterclaim may be pleaded in an action on a contract if in existence at the time the action was commenced; hence where a deficiency judgment in a foreclosure suit was not obtained by defendant until long after the action was commenced, a counterclaim based upon it was not permissible. *Dreidlein v. Manger*, 69 Mont. 155, 220 Pac. 1107.

A demurrer interposed to a counterclaim on the ground that it was "not one of the character specified" in this section, was sufficient to raise the question whether or not the counterclaim was one which could be set up in the particular action. *Mulcahy v. Duggan*, 67 Mont. 9, 214 Pac. 1106.

The "transaction" referred to in this section is that combination of acts and events, circumstances and defaults, which,

viewed in one aspect, result in plaintiff's right of action, when viewed in another aspect, result in defendant's right of action, the rule being the same whether the action be *ex contractu* or *ex delicto*. *Mulcahy v. Duggan*, 67 Mont. 9, 214 Pac. 1106.

In determining whether a counterclaim arises out of the transaction set forth in the complaint as the foundation of plaintiff's claim, the court is not limited to the facts alleged in the complaint but may look to all the facts and circumstances out of which the injury complained of by plaintiff arose. *Mulcahy v. Duggan*, 67 Mont. 9, 214 Pac. 1106.

In an action against an individual defendant to recover the price of livestock sold to him, a counterclaim for services rendered to the plaintiff by a copartnership of which defendant was a member, could not be set up, even though the other partner consented thereto. *Heinrich v. Kirby*, 64 Mont. 1, 208 Pac. 897; *Lappin v. Martin et al.*, 71 Mont. 233, 238, 228 Pac. 763; *Cook-Reynolds Co. v. Wilson*, 67 Mont. 147, 150, 214 Pac. 1104.

For text treatment of this subject see vol. 23 Cal. Jur. 221.

9139. Counterclaim—Rules thereof.

Cited in *Heinrich v. Kirby*, 64 Mont. 1, 7, 208 Pac. 897.

9146. Defendant may set forth all his defense and counterclaim.

Under the rule of practice that defendant may set up as many defenses as he may have, even though inconsistent, provided they are not so far inconsistent with each other that if the allegations of one are true those of the other must of necessity be false, defendant insurance company's denial of liability on grounds other than failure of proof of loss did not constitute a waiver of notice and

proof of loss. *Johnson v. Rocky Mountain Fire Ins. Assn.*, 70 Mont. 411, 226 Pac. 515.

Cited in *Nelson v. Young et al.*, 70 Mont. 112, 116, 224 Pac. 237.

For text treatment of this subject see vol. 21 Cal. Jur. 133; vol. 23 Cal. Jur. 275.

9151. Cross-complaint—Filing—Service.

An allegation in the answer which is neither an admission nor a denial of any averment contained in the complaint, nor authorized by this section, providing for the filing of a cross-complaint, is subject to a motion to strike. *Security State Bank of Roy v. Melchert et al.*, 67 Mont. 535, 216 Pac. 340.

Under this section, enacted to supplement the interpleader statute by providing for a class of cases not comprehended within section 9087, a defendant may by cross-complaint make others (adverse claimants) parties to the action, so as to permit the court to fully adjudicate the rights of all parties in its subject matter,

and under it defendant may, as he may not in an action of interpleader, contest with plaintiff the extent of his liability, and therefore an order striking the pleading from the files was error. *Security State Bank of Roy v. Melchert et al.*, 67 Mont. 535, 216 Pac. 340.

Right of defendant in action for injury to person or property to set up by cross-complaint claim for injury to his person or property against co-defendant, note, 43 A. L. R. 879.

For text treatment of this subject see vol. 21 Cal. Jur. 71 et seq.

CHAPTER 13.**DEMURREE TO ANSWER.****9152. When plaintiff may demur to answer.**

This and section 9154, cited as sections 6554 and 6556, Revised Codes, in State

ex rel. *Lease v. Wilkinson et al.*, 59 Mont. 327, 331, 196 Pac. 878.

9157. Must specify grounds.

Cited in *Mulcahy v. Duggan*, 67 Mont. 9, 14, 214 Pac. 1106.

CHAPTER 14.**REPLY.****9158. What reply to contain.**

Where an estoppel pleaded completely avoided the cause of action set forth in the complaint, the defendant was entitled to judgment on the pleadings. *Middle States O. Corp. v. Tanner-Jones Co.*, 73 Mont. 180, 235 Pac. 770.

Under this section, a reply to a counterclaim must be filed within twenty days after service and filing of the answer; hence where a reply was not filed until

nineteen months after the expiration of the twenty-day period and fourteen months after default had been entered, the court did not err in disregarding the belated pleading on motion for judgment on the counterclaim. *Munger v. Nelson*, 61 Mont. 104, 201 Pac. 286.

Cited in *Adams v. Durfee et al.*, 67 Mont. 315, 321, 215 Pac. 664.

9160. Failure to reply.

Cited as section 6562, Revised Codes, in *Munger v. Nelson*, 61 Mont. 104, 107, 201 Pac. 286.

CHAPTER 15.

VERIFICATION OF PLEADINGS.

9163. Verification of pleadings.

Cited in *Thedin et al. v. First Nat. Bank of Savage*, 67 Mont. 65, 71, 214 Pac. 956.

Cited in *Claussen v. Chapin*, 69 Mont. 205, 209, 221 Pac. 1073.

CHAPTER 16.

GENERAL RULES OF PLEADING.

9164. Pleadings to be liberally construed.

Where defendant was not misled by any allegations or lack of allegations in the complaint, but was fully prepared to defend the action upon the merits, the judgment in favor of plaintiff will not be reversed for mere technical defects in the pleading raised by general demurrer. *Davis v. Freisheimer*, 68 Mont. 322, 219 Pac. 236.

Under the liberal rule of construction of pleadings provided by this and section 9191, in determining the issues of law presented by a general demurrer to the complaint or by objection to the introduction of evidence, matters of form as well as allegations which are irrelevant or redundant must be disregarded, and if the pleading warrants recovery in any amount and upon any admissible theory, it will be sustained. *Grant v. Nihill*, 64 Mont. 420, 210 Pac. 914.

Under this section and the rule that the allegations of the complaint are to be construed liberally, with a view to sub-

stantial justice between the parties, failure of the plaintiff in an action to recover for extra services to set forth directly the terms of the original contract of employment did not render the complaint insufficient, where, from its averments, the terms thereof were properly inferable from the pleading. *Doane v. Marquisee*, 63 Mont. 166, 206 Pac. 420.

Cited in *Ray et al. v. Divers et al.*, 72 Mont. 513, 516, 234 Pac. 246; *Connelly v. Schluter Bros. et al.*, 69 Mont. 65, 74, 220 Pac. 103; *O'Brien v. School District No. 1*, 68 Mont. 432, 434, 219 Pac. 1113; as section 6566, Revised Codes, in *McManus v. Butte Electric Ry. Co.*, 68 Mont. 379, 389, 219 Pac. 241; *Grover v. Hines*, 66 Mont. 230, 233, 213 Pac. 250; as section 6566, Revised Codes, in *Smallhorn v. Freeman*, 61 Mont. 137, 143, 201 Pac. 567.

For text treatment of this subject see vol. 21 Cal. Jur. 53.

9165. Frivolous pleadings—How disposed of.

Under this section, an appeal does not lie from an order denying a motion for judgment on the pleadings. *Corey v.*

Sunburst Oil & Gas Co., 72 Mont. 383, 233 Pac. 909.

9166. Sham or irrelevant pleadings.

Where the plea of another action pending is open to the objection of being sham, irrelevant and redundant, it may, under this section, be stricken on motion; where, however, the sufficiency of the plea is sought to be tested, the proper practice

is to demur. *McCormick et al. v. Shields*, 63 Mont. 9, 205 Pac. 831.

For text treatment of this subject see vol. 21 Cal. Jur. 243.

9167. Account—How pleaded.

Failure to furnish a bill of particulars in a case where a bill may properly be demanded bars the delinquent party from being heard at the trial. *Munger v. Nelson*, 61 Mont. 104, 201 Pac. 286.

For text treatment of this subject see vol. 1 Cal. Jur. 157 et seq.; 21 Cal. Jur. 69.

9169. Judgments, etc.—How pleaded.

An allegation that H. "is now the duly appointed, qualified and acting adminis-

trator" of an estate was insufficient as a pleading that the administrator had been

appointed by an order "duly given or made," as permitted under this section, to show the jurisdictional fact of his appointment, and admission of evidence in support of it was therefore error. *Henderson et al. v. Daniels*, 62 Mont. 363, 205 Pac. 964.

Allegation of the complaint in an action for malicious prosecution for grand larceny in a justice's court, to the effect that the justice dismissed the charge "in due manner, in due course of law," held sufficient to show determination of the prosecution in plaintiff's favor, and not open to the objection that it was fatally defective because not in conformity with

this section, providing that where a judgment or other determination of a court is pleaded it may be stated as having been "duly given or made," the statute applying only where the pleader chooses to allege the jurisdiction of the court in the abbreviated form in a cause where the right of action depends upon the validity of the judgment or order pleaded. *Robinson v. Gordon*, 61 Mont. 124, 201 Pac. 573.

Cited in *Beck v. Felenzer et al.*, 69 Mont. 592, 598, 223 Pac. 499.

For text treatment of this subject see vol. 15 Cal. Jur. 282.

9170. Condition precedent.

The lapse of sixty days provided for in a fire insurance policy before the loss shall become payable, not being a condition precedent which plaintiff could perform before commencing suit, her general allegation, permissible under this section, that she had performed all conditions precedent to be performed by her

under the contract, did not supply the necessary allegation that the period had elapsed before filing complaint. *Smith v. Franklin Fire Ins. Co.*, 61 Mont. 441, 202 Pac. 751.

For text treatment of this subject see vol. 6 Cal. Jur. 402.

9175. Libel and slander—How stated in complaint.

In an action for libel founded on an article in a newspaper concerning a certain class of attorneys styled as "shysters" and referring to incidents occurring at a certain inquest, without, however, naming plaintiff or mentioning any individual in particular, which article was libelous per se, the complaint alleging that the matter printed was published "of and concerning the plaintiff" and that readers of the paper understood that plaintiff was

the person alluded to, was sufficient under this section to permit of proof showing that plaintiff was the person concerning whom the article was published, and was not demurrable. *Nolan v. Standard Publishing Co. et al.*, 67 Mont. 212, 216 Pac. 571.

For text treatment of this subject see vol. 16 Cal. Jur. 92.

9178. Allegations not denied—When deemed true.

Cited in *Hogan v. Thrasher*, 72 Mont. 318, 331, 233 Pac. 607.

9181. Supplemental pleading.

The matter of filing a supplemental pleading is not one which a party may demand as of right but is addressed to the discretion of the trial court, and in order to entitle the movant to favorable action, the motion must be made within

a reasonable time after the facts material to the cause come to his knowledge. *Pue v. Bushnell*, 72 Mont. 265, 233 Pac. 124.

For text treatment of this subject see vol. 21 Cal. Jur. 169.

CHAPTER 17.

VARIANCE—MISTAKES IN PLEADINGS—AMENDMENTS.

9183. Material variances—How provided for.

Plaintiff alleged one contract in his complaint under which defendant employed him as a farm-hand at a specified wage; his evidence disclosed that he worked under a number of different agreements as to the kind of work to be performed and wages to be paid. Held, that

in view of the matters alleged in the answer which required defendant to go into the entire matter of his employment of plaintiff and the wages to be paid at different times and for different periods, defendant could not have been misled to his prejudice in maintaining his defense

on the merits, and that therefore the variance was immaterial under this section. *Wasley v. Dryden*, 66 Mont. 17, 212 Pac. 491.

In an action for personal injuries the complaint in which alleged that while plaintiff, a section foreman, was assisting in moving a rail, his coemployees negligently permitted it to drop and strike an iron bar plaintiff was using, causing the bar to strike plaintiff, etc., whereas plaintiff's evidence showed that the bar was inserted in a hole in the rail which in turning carried with it the bar, striking plaintiff, the variance between pleading and proof was immaterial within the

meaning of this section. *Stevens v. Hines et al.*, 63 Mont. 94, 206 Pac. 441.

Cited in *Torgerson v. Stocke*, 72 Mont. 7, 11, 230 Pac. 1096; *Schauer v. Morgan et al.*, 67 Mont. 455, 467, 216 Pac. 347.

This and the two following sections were cited as sections 6585, 6586 and 6587, Revised Codes, in *Rice v. Chicago etc. Ry. Co.*, 59 Mont. 570, 582, 197 Pac. 999.

Effect of proving case not pleaded where amendment cannot be made, note, 29 A. L. R. 638.

For text treatment of this subject see vol. 21 Cal. Jur. 207, 263.

9185. When not to be deemed a variance.

The fact that the complaint alleges a joint contract (an account stated) with two or more defendants, and the evidence discloses a separate contract with one of them, is not a variance amounting to

a failure of proof within the meaning of this section. *Lee et al. v. Hayden*, 63 Mont. 589, 208 Pac. 596.

Cited in *State v. Brantingham*, 66 Mont. 1, 12, 212 Pac. 499.

9186. Amendments of course, and effect of demurrer.

An amendment to a pleading made as a matter of right under this section, does not become effective for any purpose until it is filed and served; hence where an amended complaint was never served, judgment by default could not be rendered against defendant. *Griffith v. Montana Wheat Growers' Assn.*, 75 Mont. 466, 244 Pac. 277.

The right of plaintiff to amend his complaint before demurrer or answer is secured to him by this section, and therefore as to it the trial court may not exercise any discretion, and the right extends to correcting or supplying a verification. *Claussen v. Chapin*, 69 Mont. 205, 221 Pac. 1073.

This section, requiring service of

amended pleadings upon the adverse party, applies only to amendments made as a matter of right, and not to amendments which can only be made by permission of the court. *Price et al. v. Skylstead*, 69 Mont. 453, 222 Pac. 1059.

An amended complaint filed after answer and without leave of court first obtained may be stricken from the files upon motion of the defendant, but if not so stricken, the irregularity will be deemed cured. *Danielson v. Danielson*, 62 Mont. 83, 203 Pac. 506.

This and section 9187 were cited as sections 6588, 6589, Revised Codes, in *Barrett v. Shipley*, 63 Mont. 152, 157, 206 Pac. 430.

9187. Amendments by the court—Enlarging time to plead and relieving from judgment.

This section, providing that the trial court may allow an amendment of any pleading upon such terms as may be just, does not under all circumstances require the imposition of terms as a condition to granting leave, the matter being left to the discretion of the court; and where it does not appear that the application to amend was untimely, or that the adversary of the applicant was placed at any disadvantage or incurred any expense by reason of the amendment having been allowed, the action of the court granting leave without imposing terms will not be held an abuse of discretion. *Wandel v. Wandel*, 76 Mont. 160, 248 Pac. 864.

The power granted to the district court under this section to set aside a default judgment is predicated upon the neglect

of the movant, coupled with a showing of facts and circumstances which will reasonably excuse it; hence the presence of neglect alone is not sufficient to deny relief. *Reynolds v. Gladys Belle Oil Co.*, 75 Mont. 332, 243 Pac. 576.

Judgments by default are not favored, it being the policy of the law to have every case tried upon its merits; trial courts in passing upon motions for opening default judgments should exercise the same liberal spirit which prompted the legislature in enacting this section, and where a court refuses to grant such a motion no great abuse of discretion need be shown to warrant a reversal. *Reynolds v. Gladys Belle Oil Co.*, 75 Mont. 332, 243 Pac. 576.

Where the resident agent of a foreign

corporation had been served with summons, his act in mailing it to the general counsel of defendant without knowledge that the latter had been discharged and who failed to transmit it to his former client, and the failure of the defendant company to advise its agent of his discharge, resulting in the entry of a judgment by default, were excusable under the circumstances. *Reynolds v. Gladys Belle Oil Co.*, 75 Mont. 332, 243 Pac. 576.

Miscarriage of a letter sent by a defendant to his attorney to take care of a case pending against him, receipt of which would have avoided an entry of default, is a sufficient showing of excusable neglect to warrant the setting aside of the default. *Reynolds v. Gladys Belle Oil Co.*, 75 Mont. 332, 243 Pac. 576.

The matter of the amendment of a pleading at any time rests within the sound discretion of the trial court and its action is not cause for reversal of a judgment in the absence of an affirmative showing of abuse of discretion resulting in prejudice. *Callan v. Hample*, 73 Mont. 321, 236 Pac. 550.

The mere fact that the parties to an action were discussing a settlement did not absolve plaintiff, against whom judgment by default was taken, from making timely appearance, and the court's refusal to open the default was proper. *Middle-States O. Corp. v. Tanner-Jones Co.*, 73 Mont. 180, 235 Pac. 770.

Under this section, the district court may and should, on motion to discharge a writ of attachment because of a defective affidavit, in furtherance of justice permit amendment of the affidavit and deny the motion, where the defect is readily amendable. *Jenkins v. First Nat. Bank et al.*, 73 Mont. 110, 236 Pac. 1085.

Where defendant, after writing a letter to an attorney relative to the action against him, failed to have a consultation with the attorney as he had promised to do and to ascertain whether he would appear for him, refusal of a motion to vacate a default judgment was not an abuse of discretion. *First State Bank v. Larsen*, 72 Mont. 400, 233 Pac. 960.

The neglect of an attorney to make timely appearance is the neglect of the client, and the latter can be relieved from the consequences of the attorney's neglect only on a showing which would excuse the client under like circumstances. *First State Bank v. Larsen*, 72 Mont. 400, 233 Pac. 960.

Affidavits in support of a motion to vacate a default judgment disclosing that the defendant was of doubtful mentality at the time the summons was served upon her and was under the impression that by appearing before a notary to give her deposition at the instance of the plaintiff

she had made appearance in the cause, a case of excusable neglect was made out and the court abused its discretion in refusing to grant the motion. *Brothers v. Brothers*, 71 Mont. 378, 230 Pac. 60.

The limitation of six months prescribed by this section, within which a default judgment may be vacated, refers to defaults entered through mistake, inadvertence or excusable neglect only, and therefore has no application to a case where lack of power in the court to enter the judgment appears upon the face of the judgment-roll and the default is sought to be set aside for that reason. *Hodson et al. v. O'Keeffe*, 71 Mont. 322, 229 Pac. 722.

A showing by the defendant on his motion to set aside a default judgment that he intended to appear on the last day but forgot, because of a headache, was insufficient to invoke judicial discretion in his favor. *Pacific Acceptance Corp. v. McCue*, 71 Mont. 99, 228 Pac. 761.

Where a decree of divorce was nominally in favor of plaintiff wife but was in fact in favor of the defendant, and the plaintiff was induced to procure it through fraud perpetrated upon her by defendant to enable him to marry another woman, she could properly proceed in the original action by motion to have it vacated, under this section. *Hall v. Hall*, 70 Mont. 460, 226 Pac. 469.

Facts examined in connection with defendant's motion for leave to amend his answer after judgment and held to constitute no abuse of the discretion of the court in granting such leave on condition that the defendant pay plaintiff's costs. *Apple v. Seaver*, 70 Mont. 65, 223 Pac. 830.

While the word "proceeding" in its more general sense comprehends every step taken or measure adopted in the prosecution or defense of an action, in its more restricted sense as employed in this section, allowing a party to amend any pleading or proceeding, it refers to every paper which may be properly employed in an action other than the pleadings. *Clausen v. Chapin*, 69 Mont. 205, 221 Pac. 1073.

An affidavit, made on information and belief, in support of an application for an injunction, was a "proceeding," within the meaning of this section, and therefore amendable, before demurrer or answer, by substituting a verification. *Clausen v. Chapin*, 69 Mont. 205, 221 Pac. 1073.

Affidavit that defendant had employed counsel on the day the summons was served, but counsel, after informing defendant that he was looking after the matter, left the state on account of ill health without filing an answer, was not

sufficient to authorize the opening of a default judgment in the absence of a certificate of the attending physician substantiating the statements of the defendant. *St. Germain v. Vollmer*, 68 Mont. 264, 216 Pac. 788.

To justify the granting of a motion to set aside a default, defendant must show that he proceeded with diligence, his excusable neglect, that the judgment if permitted to stand will affect him injuriously, and that he has a meritorious defense to plaintiff's cause of action. *Eder v. Bereolos*, 63 Mont. 363, 207 Pac. 471.

In setting aside a default judgment for neglect of counsel for defendant in an action for trespass, the court did not abuse its discretion where counsel had been for some time prior to, and was at the date for appearance, engaged as counsel for defendant in a homicide case of unusual importance, and in the conduct of which his attention was so absorbed as to cause him to overlook making an appearance, it further appearing that he acted promptly and had a meritorious defense. *Eder v. Bereolos*, 63 Mont. 363, 207 Pac. 471.

On motion to set aside a default, the applicant must make a statement of facts from which the court can determine whether or not the mistake, inadvertence, surprise or excusable neglect urged in support of it is within the contemplation of this section, the bare statement of the conclusion that the default occurred by mistake, etc., being insufficient to move the discretion of the court. *Robinson v. Petersen*, 63 Mont. 247, 206 Pac. 1092.

An affidavit of counsel for defendant that he misunderstood the date upon which the appearance of his client was due and mistakenly supposed it to be at a date ten days later than it actually was, without a statement of any fact or circumstance out of which the misunderstanding arose, was insufficient to move the discretion of the court. *Robinson v. Petersen*, 63 Mont. 247, 206 Pac. 1092.

Applications to amend, under this section, are addressed to the sound legal discretion of the trial court and should be allowed in furtherance of justice but not where the applicant has been guilty of indifference or neglect. *Barrett v. Shipley*, 63 Mont. 152, 206 Pac. 430.

Where defendant knew of the pendency of an action against him five months before judgment by default was entered, but took no steps looking to a defense on the merits until seven months after its entry, when he moved to set it aside, asking leave to file his answer, and there-

after for three years more, neglected to bring his motion on for hearing, denial of the motion on the ground of inexcusable delay was proper. *Hinderager v. MacGinniss*, 61 Mont. 312, 202 Pac. 200.

Affidavits of counsel in support of a motion to vacate a default judgment, setting forth the absence of the defendant, attempts to reach her by mail, etc., were examined and held insufficient to warrant reversal of the order denying the motion. *Smallhorn v. Freeman*, 61 Mont. 137, 201 Pac. 567.

To warrant the vacation of a default, it is necessary that the party in default show affirmatively that he proceeded with diligence, that the neglect was excusable, that the judgment if permitted to stand will affect him injuriously, and that he has a good defense on the merits. *Delaney v. Cook et al.*, 59 Mont. 92, 195 Pac. 833.

Where, in an action against eight defendants, the one most vitally interested in the result was not served with summons and did not know that it had been brought until several days after default, and the others relied upon him to make appearance and defend the action, and one of them was under the impression that the summons served upon him meant simply that he was to appear as a witness, etc., refusal to open the default was error. *Delaney v. Cook et al.*, 59 Mont. 92, 195 Pac. 833.

A default judgment should not be opened where the neglect was inexcusable or in aid of an effort to prolong litigation. *Delaney v. Cook et al.*, 59 Mont. 92, 195 Pac. 833.

In cases falling within its scope, this section itself suggests the grounds upon which the legal discretion should be brought into action. *Delaney v. Cook et al.*, 59 Mont. 92, 195 Pac. 833.

Cited in *Hetrick v. Renwald*, 73 Mont. 426, 428, 236 Pac. 1089; *Home State Bank v. Swartz*, 72 Mont. 425, 430, 234 Pac. 281; *Vassau v. Northern Pacific Ry. Co.*, 69 Mont. 305, 315, 221 Pac. 1069; *Rowan v. Gazette Printing Co. et al.*, 69 Mont. 170, 175, 220 Pac. 1104; *Price et al. v. Skylstead*, 69 Mont. 453, 461, 222 Pac. 1059; *State v. District Court et al.*, 66 Mont. 496, 506, 33 A. L. R. 464, 214 Pac. 85.

Judgment on substituted service as within provision for relief from judgment taken through mistake, surprise or excusable neglect, note, 44 A. L. R. 618.

For text treatment of this subject see vol. 14 Cal. Jur. 1014 et seq.; vol. 21 Cal. Jur. 177 et seq.

9191. No error or defect to be regarded unless it affects substantial rights.

Under this section, courts must disregard any error in proceedings which does not affect the substantial rights of the parties. *Atkinson v. Roosevelt County et al.*, 71 Mont. 165, 227 Pac. 811.

Under the liberal rules of construction of pleadings provided by this and section 9164, in determining the issues of law presented by a general demurrer to the complaint or by objection to the introduction of evidence, matters of form as well as allegations which are redundant, must be disregarded and if the pleading warrants recovery in any amount and upon any admissible theory, it will be sustained. *Grant v. Nihill*, 64 Mont. 420, 210 Pac. 914.

Cited in *Rothrock v. Bauman et al.*, 73 Mont. 401, 406, 236 Pac. 1077; *Galland v. Galland*, 70 Mont. 513, 515, 226 Pac.

511; *Hall v. Hall*, 70 Mont. 460, 466, 226 Pac. 469; *Averill Machinery Co. v. Taylor et al.*, 70 Mont. 70, 81, 223 Pac. 918; *State ex rel. Rankin v. Martin*, 68 Mont. 392, 403, 219 Pac. 632; *Davis v. Freish-eimer*, 68 Mont. 322, 331, 219 Pac. 236; *Linderberg v. Howe*, 67 Mont. 195, 199, 215 Pac. 230; *Barrett v. Shipley*, 63 Mont. 152, 158, 206 Pac. 430; *Puckett v. Hopkins et al.*, 63 Mont. 137, 143, 206 Pac. 442; as section 6593, Revised Codes, in *Kane v. Oehler et al.*, 62 Mont. 417, 421, 205 Pac. 245.

Cited as section 6593, Revised Codes, in *Rogness v. Northern Pacific Ry. Co.*, 59 Mont. 373, 382, 196 Pac. 989.

For text treatment of this subject see vol. 2 Cal. Jur. 1005.

9192. Time for answer.

Cited as section 6594, Revised Codes, in *Batchoff v. Butte Pacific Copper Co.*, 60 Mont. 179, 186, 198 Pac. 132.

CHAPTER 19.

CLAIM AND DELIVERY OF PERSONAL PROPERTY.

9220. Plaintiff may claim delivery.

To state a cause of action in claim and delivery, the complaint must allege ownership or right of possession in the plaintiff, that defendant is wrongfully in possession and the value of the property.

Hennessy Co. v. Wagner et al., 69 Mont. 46, 220 Pac. 101.

For text treatment of this subject see vol. 5 Cal. Jur. 177.

9221. Affidavit and its requisites.

Cited in *Hennessy Co. v. Wagner et al.*, 69 Mont. 46, 48, 220 Pac. 101.

9238. Title in third person.

Cited in *Agricultural Credit Co. v. O'Rourke*, 65 Mont. 517, 520, 211 Pac. 200.

CHAPTER 20.

INJUNCTION.

9242. Injunction—When not allowed.

Cited in *Atkinson v. Roosevelt County et al.*, 66 Mont. 411, 418, 214 Pac. 74.

9243. Injunction order—When granted.

Where county commissioners, acting as a canvassing board, have fraudulently canvassed the votes cast in a county seat election and have purposely declared the result improperly, removal of the county seat may be temporarily enjoined. *Atkinson v. Roosevelt County et al.*, 66 Mont. 411, 214 Pac. 74.

Cited as section 6643, Revised Codes, in *Parsons et al. v. Mussigbrod et al.*, 59 Mont. 336, 339, 196 Pac. 528.

Injunctive relief against boycott in industrial disputes, notes, 6 A. L. R. 969; 16 A. L. R. 238; 27 A. L. R. 657.

Injunction against use of negative to

print copies for sale, advertising, etc., note, 24 A. L. R. 1320.

Landlord's interference with possession or enjoyment of premises as ground for

injunction, notes, 20 A. L. R. 1390; 28 A. L. R. 1336.

For text treatment of this subject see vol. 14 Cal. Jur. 218, 229.

9244. Injunction order—At what time granted, and on what papers—Who may serve.

Cited in *Claussen v. Chapin*, 69 Mont. 205, 209, 211, 221 Pac. 1073.

9247. Order to show cause.

Cited in *Atkinson v. Roosevelt County et al.*, 66 Mont. 411, 418, 214 Pac. 74.

Cited as section 6647, Revised Codes, in

Parsons et al. v. Mussigbrod et al., 59 Mont. 336, 339, 196 Pac. 528.

9250. Application to dissolve.

A temporary restraining order granted upon notice and after a hearing may not, in the absence of inadvertence, mistake or change in existing circumstances or of a provision in the order preserving to the party enjoined the privilege of moving for a modification, be modified there-

after, pending trial of the cause on its merits. *Winnett Pacific Oil Co. v. Wilson*, 71 Mont. 250, 229 Pac. 850.

For text treatment of this subject see vol. 14 Cal. Jur. 282-291.

CHAPTER 21.

ATTACHMENT.

9256. When attachment may issue.

A bond given in pursuance to section 4767 to insure the prompt payment of county funds is a contract for the direct payment of money, warranting the issuance of a writ of attachment in an action against the sureties to recover thereon. *State v. Pondera Valley State Bank et al.*, 77 Mont. 1, 248 Pac. 207.

Where an attachment exists at the time of judgment in favor of the attaching creditor, it becomes merged in the judgment. *Harboldt v. Hensen*, 75 Mont. 512, 244 Pac. 488.

The double liability imposed by section 6036 upon a holder of stock in an insolvent state bank is in the nature of a guaranty and will not, therefore, support an attachment in an action by the receiver to collect an assessment levied upon the stock of a delinquent stockholder. *Muri v. Young*, 75 Mont. 213, 245 Pac. 956.

An action by a county treasurer to recover on a bond securing bank deposits of county funds is one on a contract for the direct payment of money, warranting the issuance of a writ of attachment against the property of the sureties. *Jenkins v. First Nat. Bank et al.*, 73 Mont. 110, 236 Pac. 1085.

In an action on an unsecured note given by the purchaser of real property under an executory contract for its sale, an attachment may properly issue. *Smith v. Bunston*, 72 Mont. 535, 234 Pac. 836.

The double liability imposed by section 6036 upon a stockholder in a state banking corporation is in its nature contractual and in an action to collect an assessment made against him upon that liability, an attachment will lie. *Home State Bank v. Swartz*, 72 Mont. 425, 234 Pac. 281.

An action by a surety for contribution from his cosurety is one on an implied contract for money by the former for the use and benefit of the latter; hence the action is one in which an attachment may issue. *Wall v. Brookman*, 72 Mont. 228, 232 Pac. 774.

Attachment is a summary proceeding ancillary to the action in which it is issued and is of purely statutory origin, and the legislature by enacting the general attachment statute under which the writ can issue only in an action upon a contract, express or implied, for the direct payment of money, was not thereby deprived of its power to grant the remedy in an action *ex delicto*. *Daley et al. v. Torrey et al.*, 71 Mont. 513, 230 Pac. 782.

A bond in which the sureties unconditionally undertook to indemnify the county treasurer for default of a bank to pay over to him on demand any funds that he might have on deposit therein was a contract of surety and not of guaranty and hence was a contract for the direct payment of money, warranting the issuance of an attachment against

the property of the sureties in an action on the bond. *State ex rel. Barnett v. Reynolds et al.*, 68 Mont. 572, 220 Pac. 525.

A contract guaranteeing "the collection and payment of the within note" was not one for the direct payment of money within the meaning of the attachment statute, and therefore an attachment issued in an action to enforce the guaranty was properly dissolved. *Square Butte State Bank v. Ballard*, 64 Mont. 554, 210 Pac. 889.

The liability of a director for the debts of his corporation imposed by section 6003, for failure of the corporation to file its annual report, does not arise out of a contract express or implied for the direct payment of money. In an action to enforce such liability, an attachment was improperly issued. *Butler v. Peters*, 62 Mont. 381, 26 A. L. R. 560, 205 Pac. 247.

Where an attachment is issued in an action not falling within the provision of this section, and service of summons is made by publication only, the property of defendant is not brought within the jurisdiction and control of the court, and

a judgment by default, being one in personam, is void. *Hinderager v. MacGinniss*, 61 Mont. 312, 202 Pac. 200.

The question whether an action is one in which a writ of attachment may issue under this section, must be determined upon the complaint alone. *Heffron v. Thomas et al.*, 61 Mont. 10, 201 Pac. 572.

An action by the buyer of an automobile to recover its purchase price with interest, because of failure of title in the seller, was not one upon a contract for the direct payment of money, and therefore an attachment issued therein was properly dissolved. *Heffron v. Thomas et al.*, 61 Mont. 10, 201 Pac. 572.

Cited in *Wall v. Duggan et al.*, 76 Mont. 239, 245, 245 Pac. 953; *Englehart v. Sage*, 73 Mont. 139, 144, 40 A. L. R. 590, 235 Pac. 767.

This and the following section were cited as sections 6656, 6657, Revised Codes, in *Savage Tire Sales Co. v. Stuart et al.*, 61 Mont. 524, 530, 203 Pac. 364.

For text treatment of this subject see vol. 3 Cal. Jur. 406, 413.

9257. Affidavit—What to contain.

An affidavit on attachment which alleges specific indebtedness of the defendant in a principal sum is not vitiated by reference to interest, but is sufficient to sustain the attachment to the extent of the principal sum at least. *State ex rel. Nauman v. Pondera Valley State Bank*, 77 Mont. 1, 248 Pac. 207.

A plaintiff who desires to avail himself of the remedy of the writ of attachment must comply with the provisions of this section, one of which is that the affidavit must recite that the debt sued upon "has not been secured"; hence a statement that the debt "is not secured," leaving it to be inferred that it once may have been secured but is not then, renders the affidavit insufficient and the writ subject to

discharge. *Jenkins v. First Nat. Bank et al.*, 73 Mont. 110, 236 Pac. 1085.

Where, because of a defective affidavit on attachment, the writ should have been discharged (unless the trial court in furtherance of justice saw fit to permit the affidavit to be cured by amendment), and it is apparent that the defect is readily amendable and the amendment will be in furtherance of justice, the cause will be remanded with directions to discharge the attachment unless, within a stated time after remittitur filed, the plaintiff shall file an amended affidavit to meet the requirements of this section. *Home State Bank v. Swartz*, 72 Mont. 425, 234 Pac. 281.

Cited in *Daley et al. v. Torrey et al.*, 71 Mont. 513, 514, 230 Pac. 782.

9259. Undertaking.

Cited in *Jenkins v. First Nat. Bank et al.*, 73 Mont. 110, 115, 236 Pac. 1085.

9260. Writ—To whom directed and what to contain.

When the complaint on which a writ of attachment is issued demands different amounts from several defendants, the writ must conform to the complaint in that respect and direct the attachment of so much property of the respective defendants as will secure the amount alleged to be due from each one. *State ex rel. Nauman v. Pondera Valley State Bank*, 77 Mont. 1, 248 Pac. 207.

Where each one of a number of co-

defendants against whom a writ of attachment had been issued challenged its sufficiency as a whole, a motion to discharge it was properly denied where it was sufficient as to any one of them, even though improperly issued as to the others. *Jenkins v. First Nat. Bank et al.*, 73 Mont. 110, 236 Pac. 1085.

Cited in *Englehart v. Sage*, 73 Mont. 139, 144, 40 A. L. R. 590, 235 Pac. 767; *Himmelbauer v. Union Bank & Trust Co.*,

68 Mont. 34, 38, 220 Pac. 84; *State ex rel. Hopkins v. Stephens*, 63 Mont. 318, 322, 206 Pac. 1094.

For text treatment of this subject see vol. 3 Cal. Jur. 454-458, 507, 511-515.

9261. Shares of stock and debts due defendant—How attached and disposed of.

Under this section and 9262, a debt is "property" which may be attached, and a levy upon it operates to impound it and in effect to place it in the custody of the law and beyond the control of its owner; hence where a debt due plaintiff was wrongfully attached in an action against

another, the seizure amounted to a conversion. *Englehart v. Sage*, 73 Mont. 139, 40 A. L. R. 590, 235 Pac. 767.

For text treatment of this subject see vol. 6 Cal. Jur. 809.

9262. Levy of attachment.

The requirements of the statute that personal property capable of manual delivery must be attached by taking it into custody, and that property of that description incapable of such delivery must be attached by leaving a copy of the writ with the owner or the person in control of it as his agent, together with a notice that it is attached in pursuance of the writ, must be substantially followed, the statute recognizing no equivalent or evasion, otherwise the attaching creditor acquires no lien upon the property in satisfaction of any judgment he may thereafter obtain. *Keith v. Ramage et al.*, 66 Mont. 578, 214 Pac. 326.

Cited in *State ex rel. Coffey v. Dis-*

trict Court, 74 Mont. 355, 360, 240 Pac. 667.

Applied with section 9261 in *Englehart v. Sage*, 73 Mont. 139, 40 A. L. R. 590, 235 Pac. 767.

Cited in *Marlowe v. Missoula Gas Co. et al.*, 68 Mont. 372, 377, 219 Pac. 1111; *Himmelbauer v. Union Bank & Trust Co.* 68 Mont. 34, 38, 220 Pac. 84; *Northern Montana State Bank v. Collins*, 67 Mont. 575, 584, 216 Pac. 330; *Newman v. Assn. of Credit Men*, 63 Mont. 545, 553, 208 Pac. 914.

For text treatment of this subject see vol. 15 Cal. Jur. 1025, 1031, 1035-1040.

9267. Garnishment—When garnishee liable to plaintiff.

Cited in *Englehart v. Sage*, 73 Mont. 139, 145, 40 A. L. R. 590, 235 Pac. 767.

9273. Property claimed by third persons.

Cited in *Englehart v. Sage*, 73 Mont. 139, 146, 40 A. L. R. 590, 235 Pac. 767;

Wray v. Great Falls Paper Co., 72 Mont. 461, 468, 234 Pac. 486.

9275. Alias writ of attachment—Penalty.

Cited in *National Bank v. First Nat. Bank*, 71 Mont. 242, 249, 228 Pac. 80.

9276. If plaintiff obtains judgment, how satisfied.

Cited in *Wall v. Duggan et al.*, 76 Mont. 239, 245, 245 Pac. 953; *Harboldt v. Hensen*, 75 Mont. 512, 514, 244 Pac.

488; *Englehart v. Sage*, 73 Mont. 139, 143, 40 A. L. R. 590, 235 Pac. 767.

9282. When a motion to discharge attachment may be made, and upon what ground.

The "release" of an attachment refers exclusively to the levy of the writ, involves a ministerial duty, and may be ordered by the party who caused the levy to be made; whereas, its "discharge" refers to the writ itself, involves a judicial function and one the party securing the writ cannot perform himself, nor procure to have it performed by an officer for him. *National Bank of Mon-*

tana v. First Nat. Bank of Poplar, 71 Mont. 242, 228 Pac. 80.

This section, permitting discharge of an attachment on the ground that the writ was improperly or irregularly issued, does not authorize its discharge on the ground that the proceeds of sale of homestead lands were exempt from seizure. *Davis et al. v. Bryant*, 62 Mont. 352, 205 Pac. 209.

Cited in *Jenkins v. First Nat. Bank et al.*, 73 Mont. 110, 119, 236 Pac. 1085.

For text treatment of this subject see vol. 3 Cal. Jur. 538.

9283. When motion made on affidavit it may be opposed by affidavit.

This and the following section were cited as sections 6682, 6683, Revised

Codes, in *Davis et al. v. Bryant*, 62 Mont. 352, 354, 205 Pac. 209.

9284. When writ must be discharged.

Where the affidavit for a writ of attachment originally recited that the debt sued on had not been secured, the court properly permitted the affiant to amend to the effect that while the debt had originally been secured, the security had become valueless without any fault of his. *Hetrick v. Renwald*, 73 Mont. 426, 236 Pac. 1089.

An affidavit on attachment stating that the debt "is not secured" instead of "has not been secured" as required by statute, though defective, was not void, but sub-

ject to amendment under this section. *American Surety Co. of New York v. Kartowitz*, 59 Mont. 1, 195 Pac. 99.

Cited in *Hetrick v. Renwald*, 73 Mont. 426, 428, 236 Pac. 1089; *Jenkins v. First Nat. Bank et al.*, 73 Mont. 110, 117, 236 Pac. 1085; *National Bank v. First Nat. Bank*, 71 Mont. 242, 248, 228 Pac. 80; *Butler v. Peters*, 62 Mont. 381, 383, 205 Pac. 247.

For text treatment of this subject see vol. 15 Cal. Jur. 539.

9285. Motion to vacate or modify writ or increase security.

Cited as section 6684, Revised Codes, in *American Surety Co. of N. Y. v. Kartowitz*, 59 Mont. 1, 5, 195 Pac. 99.

9288. Different attachments—When liens accrue.

Cited in *Wall v. Duggan et al.*, 76 Mont. 239, 245, 245 Pac. 953; *Harboldt*

v. Hensen, 75 Mont. 512, 514, 244 Pac. 488.

CHAPTER 22.

RECEIVERS.

9301. Appointment of receiver.

Quaere: May a receiver be appointed in an action to quiet title, under subdivision 6 of this section, providing that a receiver may be appointed in all cases where receivers have been appointed by the usages of courts of equity? *Doggett v. Johnson*, 77 Mont. 461, 251 Pac. 145.

Cited in *Doggett v. Johnson*, 72 Mont. 443, 446, 234 Pac. 252.

Right of mortgagees to receiver, notes, 26 A. L. R. 33; 36 A. L. R. 609.

Preferred stockholders' right to have receiver appointed, note, 50 A. L. R. 261.

For text treatment of this subject see vol. 22 Cal. Jur. 440 et seq.

CHAPTER 23.

DEPOSIT IN COURT.

9309. Money paid to clerk must be deposited with county treasurer.

Cited in *State v. McGraw*, 74 Mont. 152, 162, 240 Pac. 812.

CHAPTER 25.

JUDGMENT IN GENERAL.

9313. Judgment defined.

Cited in *Noe v. Matlock et al.*, 64 Mont. 35, 38, 208 Pac. 591; *State Bank of New Salem v. Schultze*, 63 Mont. 410, 416, 209 Pac. 599; as section 6710 Re-

vised Codes, in *McCormick et al. v. Shields*, 63 Mont. 9, 13, 205 Pac. 831; *In re Smith's Estate*, 60 Mont. 276, 296, 199 Pac. 696.

9314. Judgment may be for or against one of the parties.

Cited in *Lee et al. v. Hayden*, 63 Mont. 589, 597, 208 Pac. 596.

9315. Judgment may be against one party and action proceed as to other.

Cited in *Lee et al. v. Hayden*, 63 Mont. 589, 597, 208 Pac. 596.

9316. Relief to be awarded to plaintiff.

The rule that a party may not adopt one theory of the case in his complaint and recover upon another, or adopt one theory in the trial court and insist upon a different one on appeal, is not affected by the provision of this section that the district court may grant plaintiff any relief consistent with his complaint and fairly embraced within the issues. *Outlook F. E. Co. v. American S. Co.*, 70 Mont. 8, 223 Pac. 905.

In a mortgage foreclosure suit the court may order the land to be sold en masse without a foundation therefor being laid in the pleadings; therefore the contention of defendants, who defaulted,

that since plaintiff's prayer did not ask such relief and on default he was not entitled to relief not demanded in the complaint, was without merit. *Elston v. Hix et al.*, 67 Mont. 294, 215 Pac. 657.

Cited in *State ex rel. Petters & Co. v. District Court*, 76 Mont. 143, 149, 245 Pac. 529; *Elston v. Hix et al.*, 67 Mont. 294, 300, 215 Pac. 657; *Simonsen v. Barth et al.*, 64 Mont. 95, 99, 208 Pac. 938; as section 6713, Revised Codes, in *Wing et al. v. Brasher*, 59 Mont. 10, 19, 194 Pac. 1106.

For text treatment of this subject see vol. 14 Cal. Jur. 985.

9317. Action may be dismissed or nonsuit entered.

Dismissal of an action for neglect of the successful party to have judgment entered for more than six months after verdict or final submission must precede entry of judgment; therefore a judgment entered after the expiration of the six months' period, but before motion to dismiss is interposed, is not void and hence not open to collateral attack. *Kasun v. Todevich*, 71 Mont. 315, 229 Pac. 714.

While the language of subdivision 6 of this section, that an action may be dismissed by the court when after verdict or final submission the party entitled to judgment neglects to have it entered for more than six months, is mandatory, the provision can be invoked only in a case which comes clearly within its terms. *Kasun v. Todevich*, 71 Mont. 315, 229 Pac. 714.

Where defendant in an action for divorce did not interpose a counterclaim or ask for affirmative relief in her answer, plaintiff, under this section, could properly dismiss the action before trial, after he had been ordered to pay alimony, and commence a new action in another county without being open to the charge of sharp practice. *Davenport v. Davenport*, 69 Mont. 405, 222 Pac. 422.

Under this section, an action may be dismissed when after "final submission"—when judgment may be demanded as a matter of right—the party entitled thereto through his own neglect fails to have it entered for more than six months,

thus evincing an intention to abandon the fruits of his victory. *Samuell v. Montana-Holland Colonization Co.*, 69 Mont. 111, 220 Pac. 1093.

In an action tried to the court sitting without a jury findings of fact and conclusions of law were made in favor of plaintiff but before judgment was entered the trial judge notified counsel that they had been withdrawn for further consideration, and a minute entry was made to that effect. The judge soon thereafter resigned and the parties stipulated that the cause should be submitted to his successor for decision upon the evidence previously taken and upon arguments to be presented. The cause was set but the setting canceled. The term of the second judge expired without a decision having been reached. It was again stipulated that the cause should be submitted to the newly elected judge, but before it was actually submitted counsel for plaintiff ascertained that the findings and conclusions never had been withdrawn from the files and he thereupon asked for judgment, counsel for defendant on the other hand moving for dismissal of the action for failure of plaintiff to have the judgment entered for more than six months after the findings and conclusions had been made and filed. The court granted the latter motion and denied the former. Held, that the court erred since, under the circumstances, plaintiff was not guilty of neglect in failing to have judgment

entered within the time limited by this section. *Samuell v. Montana-Holland Colonization Co.*, 69 Mont. 111, 220 Pac. 1093.

Under this section, providing for a dismissal or nonsuit for failure of proof, whether there is substantial evidence in support of plaintiff's case is always a question of law for the court. *Flynn v. Poindexter and Orr L. Co.*, 63 Mont. 337, 207 Pac. 341.

Since, in legal effect, a motion for a directed verdict is a demurrer to the evidence, where no evidence was introduced in a claim and delivery action, an order directing the jury to find in favor of defendant, was technical error, this section providing that in such a case a nonsuit or dismissal of the complaint is the proper remedy; held, however, that the error was harmless, the action taken by the court having placed plaintiff in no worse position than he would have been if the statute had been strictly pursued. *Barrett v. Shipley*, 63 Mont. 152, 206 Pac. 430.

The six months' period at the expiration of which an action may be dismissed by the court, under this section, if the party entitled to judgment neglects to demand and have the same entered, does not commence to run from date of entry of default, in a personal injury action,

but from the date of final submission, i. e., production of proof by plaintiff. *Batchoff v. Butte Pacific Copper Co.*, 60 Mont. 179, 198 Pac. 132.

Under this section an action may be dismissed by the court when after final submission, i. e., a submission which is the equivalent of a verdict and when judgment may be demanded as of course, the party entitled thereto has neglected for more than six months to demand and have judgment entered. *Smotherman v. Christianson*, 59 Mont. 202, 195 Pac. 1106.

Where, in an action for unliquidated damages, plaintiff did not after entry of default, apply to the court, make proof of his damages and secure a determination of the amount either by the court or by the verdict of a jury, there was no submission equivalent to a verdict, and the court erred in dismissing the action under subdivision 6 of this section. *Smotherman v. Christianson*, 59 Mont. 202, 195 Pac. 1106.

Cited in *Bennetts v. Silver Bow Amusement Co.*, 65 Mont. 340, 346, 211 Pac. 336; *Lee v. Stockmen's Nat. Bank et al.*, 63 Mont. 262, 285, 207 Pac. 623.

For text treatment of this subject see vol. 9 Cal. Jur. 507 et seq.

9318. All other judgments are on the merits.

Cited in *Bennetts v. Silver Bow Amusement Co.*, 65 Mont. 340, 347, 211 Pac. 336.

9320. Effect of judgment dismissing complaint.

Where the judgment of nonsuit in a prior action between the same parties involving the same subject matter in a subsequent action did not disclose that it had been rendered on the merits, refusal to permit the judgment-roll to be introduced in evidence on a plea of res

adjudicata was proper. *Bennetts v. Silver Bow Amusement Co.*, 65 Mont. 340, 211 Pac. 336.

Dismissal or nonsuit in action on contract as bar to suit for reformation, note, 49 A. L. R. 1514.

CHAPTER 26.

JUDGMENT BY DEFAULT.

9322. In what cases judgment by default may be entered.

The provision of subdivision 2 of this section that where no appearance has been made by defendant within the time therein specified, "the clerk must enter" his default is directory rather than mandatory. *Edenfield v. Seal Co., Inc.*, 74 Mont. 509, 241 Pac. 227.

The "further time" which may be granted a defendant under this section, in addition to that specified in the summons within which to make appearance, held to mean such time as may be granted by order of court, by stipulation

or impliedly by the failure of the plaintiff to have default entered. *Edenfield v. Seal Co., Inc.*, 74 Mont. 509, 241 Pac. 227.

Cited in *Marlowe v. Missoula Gas Co.*, et al., 68 Mont. 372, 376, 219 Pac. 1111; as section 6719, Revised Codes, in *Smotherman v. Christianson*, 59 Mont. 202, 204, 195 Pac. 1106.

For text treatment of this subject see vol. 14 Cal. Jur. 879 et seq.

CHAPTER 27.

ISSUES—THE MODE OF TRIAL AND POSTPONEMENTS.

9326. Issue of fact—How raised.

Cited as section 6723, Revised Codes, in *In re Stinger Estate*, 61 Mont. 173, 183, 201 Pac. 693.

9327. Issue of fact—How tried—When issues both of law and fact, the former to be first disposed of.

An action was instituted against a corporation to recover on promissory notes given by it and to enforce liability of its directors as comakers and guarantors and for failure to file the annual statements required by statute. The only equitable relief prayed for was the foreclosure of a mortgage given by one of the directors on two town lots as security for the notes. The answers of the defendants consisted inter alia of denials and counterclaims which were put in issue by reply. Held that the defendants were

entitled to a trial by jury of the strictly legal issues and that denial of such jury trial was error. *Benson-Stabeck Co. v. Farmers' E. Co. et al.*, 66 Mont. 395, 214 Pac. 600.

Cited in *Solberg v. Sunburst Oil & Gas Co. et al.*, 70 Mont. 177, 181, 225 Pac. 612; *Best v. Beaudry*, 62 Mont. 485, 489, 205 Pac. 239.

For text treatment of this subject see vol. 15 Cal. Jur. 339; vol. 24 Cal. Jur. 783.

9331. Parties may bring issue to trial.

Cited in *Ward v. Strowd et al.*, 76 Mont. 93, 103, 244 Pac. 1007; *Davenport*

v. Davenport, 69 Mont. 405, 408, 222 Pac. 422.

9332. Motion to postpone a trial for absence of testimony, requisites of.

Where counsel for plaintiff asked for a continuance on the ground that plaintiff was unable to attend because of illness, and counsel for defendant agreed that he would admit that, if present, plaintiff would testify to the matters set forth in her affidavit, the continuance was properly denied. *Ward v. Strowd et al.*, 76 Mont. 93, 244 Pac. 1007.

In denying a motion for a continuance on the ground of absent witnesses the court did not abuse its discretion where movant did not show that he had used due diligence in procuring the desired evidence, nor set forth that if a continuance were granted he would be able to secure the personal attendance of the witnesses or their evidence at a subsequent time, and his assertion of what he "believed" the witness would testify to was fairly met by counter-affidavits. *McCarthy v. Anaconda Copper Mining Co.*, 70 Mont. 309, 225 Pac. 391.

The affidavit on application for a continuance on the ground of the absence of a necessary witness must show that due diligence was exercised by the applicant to procure the evidence of the wit-

ness, set forth the substance thereof, and that the witness if present will testify. *Davenport v. Davenport*, 69 Mont. 405, 222 Pac. 422.

Where a continuance was sought in a divorce action on the ground that defendant, a necessary witness, was unable to be present because of her inability to defray the expense of travel, refusal thereof was proper in the absence of a showing that her financial condition would improve in the meantime, and of an excuse for failure to have her deposition taken. *Davenport v. Davenport*, 69 Mont. 405, 222 Pac. 422.

Affidavits for a continuance not showing when the subpoena for an absent witness was issued, why it was sent to the sheriff of a county other than that of the residence of the witness, or that there was probability or possibility that his personal appearance or deposition could be procured at a date later than that set for trial, were insufficient. *Hunt v. Van*, 61 Mont. 395, 202 Pac. 573.

For text treatment of this subject see vol. 5 Cal. Jur. 995, 1000, 1007-1010.

CHAPTER 28.

TRIAL BY JURY—FORMATION OF THE JURY.

9341. Ballots when drawn from box No. 3.

The procedure prescribed by this section, for drawing a special jury panel from box No. 3, which must be discharged upon conclusion of the particular case for which drawn, applies only where the regular panel has been exhausted because of an unusual number of disqualifications for cause in the particular case

on trial, or where the jury impaneled in the case previously submitted is still in deliberation. *Lee et al. v. Hayden*, 63 Mont. 589, 208 Pac. 596.

Cited as section 6738, Revised Codes, in *State v. Vuckovich*, 61 Mont. 480, 489, 203 Pac. 491.

CHAPTER 29.

CONDUCT OF THE TRIAL.

9349. Order of trial.

An objection to an instruction that the evidence did not warrant its giving was insufficient under subdivision 5 of this section, which requires the objecting party to specify particularly wherein the instruction was insufficient or did not state the law. *State v. Daly*, 77 Mont. 387, 250 Pac. 976.

An objection to an instruction that it was an incorrect statement of the law and would have a tendency to mislead the jury held insufficient to entitle the alleged error to review, under this section, which requires the objector to point out wherein the proposed instruction is objectionable. *Brunnabend v. Tibbles*, 76 Mont. 288, 246 Pac. 536.

Under this section, the supreme court is prohibited from considering on appeal any objection not raised in the trial court. *Brunnabend v. Tibbles*, 76 Mont. 288, 246 Pac. 536.

Under this section, the supreme court is prohibited from taking cognizance of any objection to an instruction not specifically pointed out in the trial court. *Eablonski v. Close*, 70 Mont. 292, 225 Pac. 129.

Under this section, the supreme court in its review of instructions is limited to the objections made by counsel for appellant at the time they were settled; hence though an instruction may be incorrect but not open to the particular objection urged against it, the court may not declare error on that account. *Outlook F. E. Co. v. American S. Co.*, 70 Mont. 8, 223 Pac. 905.

Under this section, the district court is precluded from granting a new trial for error in an instruction not specifically pointed out at the time of settlement of the instructions, and on appeal

the supreme court will not consider any error not so pointed out. *Lindquist v. Jennison et al.*, 66 Mont. 516, 214 Pac. 67.

Under this section, the supreme court may not reverse a judgment for error in instructions unless the error was specifically pointed out and excepted to at the settlement of the instructions. *State v. Newman*, 66 Mont. 180, 213 Pac. 805.

Where plaintiff did not inject any new matter in rebuttal and defendant did not ask leave to offer evidence in their original case nor make any offer of proof, refusal to permit them to introduce testimony in surrebuttal was not an abuse of discretion. *First Nat. Bank of Saco v. Vagg et al.*, 65 Mont. 34, 212 Pac. 509.

In its review of an alleged erroneous instruction, the supreme court is limited under this section, to the particular objection to it urged upon the trial court at the time the instructions were settled. *Humber v. Marshall*, 60 Mont. 267, 198 Pac. 747.

Cited in *Stiemke v. Jankovich et al.*, 72 Mont. 363, 373, 233 Pac. 904; *Tripp v. Silver Dyke Mining Co.*, 70 Mont. 120, 122, 224 Pac. 272; *General F. E. Co. v. Northwestern A. S. Co.*, 70 Mont. 1, 7, 223 Pac. 504; *Connelly Co. v. Schlueter Bros. et al.*, 69 Mont. 65, 69, 220 Pac. 103; *Morgan v. Hines et al.*, 65 Mont. 306, 314, 211 Pac. 778; *Laird v. Berthelote*, 63 Mont. 122, 136, 206 Pac. 445; as section 6746, Revised Codes, in *Zanos v. Great Northern Ry. Co.*, 60 Mont. 17, 22, 198 Pac. 138.

Right to limit number of witnesses, notes, 21 A. L. R. 335; 48 A. L. R. 947.

For text treatment of this subject see vol. 24 Cal. Jur. 731, 767, 794, 812.

CHAPTER 30.

THE VERDICT.

9360. General and special verdicts defined.

Cited in *Dalke v. Pancoast*, 63 Mont. 524, 527, 208 Pac. 589.

9361. When a general or special verdict may be rendered.

Cited in *Dalke v. Pancoast*, 63 Mont. 524, 527, 208 Pac. 589.

9362. Verdict in actions for recovery of money or on establishing counterclaim.

Cited in *General F. E. Co. v. Northwestern A. S. Co.*, 70 Mont. 1, 7, 223 Pac. 504.

9363. Verdict in actions for the recovery of specific personal property.

The provision of this section that in claim and delivery the jury shall find the value of the property, does not apply where the value is conceded by both parties to be a certain amount. *Dalke v. Pancoast*, 63 Mont. 524, 208 Pac. 589.

Cited in *Hennessy Co. v. Wagner et*

al., 69 Mont. 46, 48, 220 Pac. 101; *Wilber v. Wilber*, 63 Mont. 587, 588, 207 Pac. 1002.

For text treatment of this subject see vol. 5 Cal. Jur. 196.

9364. Directed verdict—When.

A case should never be withdrawn from the jury unless the conclusion from the facts follows necessarily, as a matter of law, that a recovery cannot be had upon any view which can reasonably be drawn from the facts which the evidence tends to establish. *Johnson v. Chicago etc. Ry. Co.*, 71 Mont. 390, 230 Pac. 52.

Where, in an action to recover the purchase price of fire-extinguishing apparatus, the defendant interposed a counterclaim for \$10,000 for breach of contract, the failure of the plaintiff to introduce any testimony did not authorize the court to direct a verdict for defendant in that amount for unliquidated damages, the weight to be given to defend-

ant's testimony and the amount recoverable by him being within the exclusive province of the jury. *General F. E. Co. v. Northwestern A. S. Co.*, 70 Mont. 1, 223 Pac. 504.

Under this section, where upon the trial of an issue by a jury only questions of law are presented, the court may direct the jury to render a verdict in favor of the party entitled thereto. *Moore et al. v. Crittenden et al.*, 62 Mont. 309, 204 Pac. 1035.

Right of party to have case submitted to jury when his own testimony negatives his right of action or defense, note, 50 A. L. R. 979.

CHAPTER 31.

TRIAL BY THE COURT.

9366. Upon trial by court, decision to be in writing and filed within twenty days.

The requirement of this section that the decision or findings of the trial court must be filed within twenty days after submission of the case is directory only, and failure to make decision within that time does not deprive the court of jurisdiction to decide the case at a later date. *Hoppin v. Long*, 74 Mont. 558, 241 Pac. 636.

Where the trial judge made his findings and conclusions of law within twenty

days as required by this section, and before his term of office expired and directed his stenographer to file them but the latter delayed doing so until expiration of that time, they will not be ordered stricken on that ground. *Hoppin v. Long*, 74 Mont. 558, 241 Pac. 636.

The requirement of this section, that in a case tried by the court its decision or findings must be filed within twenty days

after submission of the case, is directory merely. In re Bradfield's Estate, 69 Mont. 247, 221 Pac. 531.

Under this section, a judgment will not be reversed for failure of the trial court to make specific findings where the complaining party did not, at the close of the evidence and argument, make request therefor in writing and cause such

request to be entered in the minutes. Hoskins v. Scottish Union Nat. Ins. Co., 59 Mont. 50, 195 Pac. 837.

Sections 9368, 9369 were cited in State ex rel. Case v. Bolles et al., 74 Mont. 54, 60, 238 Pac. 586.

For text treatment of this subject see vol. 24 Cal. Jur. 923.

9369. Want of findings—Judgment not reversed.

Under this section, providing that a judgment shall not be reversed for want of findings unless request therefor shall have been made at the close of the argument, where findings were not requested until three days after argument—treating the expiration of the time within which to file memoranda of authorities as the close of the argument—the court did not err in failing to make findings. Doering v. Selby et al., 75 Mont. 416, 244 Pac. 485.

The presumption on appeal is that the trial court did not commit error; therefore, where error was assigned on the failure of the court to make findings as requested but the record did not disclose when the request was made or that the request had been entered in the minutes as required by this section, the assign-

ment will not be considered. Edwards et al. v. Muri, 73 Mont. 339, 237 Pac. 209.

The provisions of this section and 9370 relative to the necessity of taking exceptions to alleged defective findings and their settlement by the trial judge, refer only to findings which are defective in the sense that they omit matters which are necessary or proper to be stated and not to what they contain, and therefore do not apply to a case where the court makes sufficient findings to warrant the relief prayed for but does not make the correct conclusions of law from the facts found. Louis v. Theatorium Co. et al., 69 Mont. 50, 222 Pac. 1062.

Cited in State ex rel. Case v. Bolles et al., 74 Mont. 54, 60, 238 Pac. 586; as section 6766, Revised Codes, in Hoskins v. Scottish Union & Nat. Ins. Co., 59 Mont. 50, 53, 195 Pac. 837.

9370. Exception for defective findings—Particular defect to be pointed out.

While before entry of judgment the trial court may, under this section, upon timely application, correct defective findings, after its entry the only remedy of the party who claims that the findings made are not supported by the evidence and desires others substituted and the judgment amended accordingly, is by appeal from the judgment on refusal of the court

to amend. Merhar v. Powers et al., 73 Mont. 451, 236 Pac. 1076.

Cited in Samuell v. Montana-Holland Colonization Co., 69 Mont. 111, 115, 220 Pac. 1093.

Applied with section 9369 in Louis v. Theatorium Co. et al., 69 Mont. 50, 222 Pac. 1062.

CHAPTER 33.

PROVISIONS RELATING TO TRIALS IN GENERAL—EXCEPTIONS.

9387. What deemed excepted to.

Under this section, providing that every order, ruling or decision of the district court shall be deemed excepted to and it shall not be necessary to ask for or note an exception, an objection and exception to an order granting a motion for a directed verdict were not necessary to warrant review of the order on appeal. General F. E. Co. v. Northwestern A. S. Co., 70 Mont. 1, 223 Pac. 504.

The rule declared by this section, inter alia providing that every ruling or decision of the district court on the admissi-

bility of evidence shall be deemed excepted to, has reference to civil, not criminal cases. State v. Prouty, 60 Mont. 310, 199 Pac. 281.

Cited in Laird v. Berthelote, 63 Mont. 122, 136, 206 Pac. 445; McAbey v. Junk, 68 Mont. 198, 204, 216 Pac. 1111; as chapter 255, L. 1921, in State v. Carmichael, 62 Mont. 159, 161, 204 Pac. 362.

For text treatment of this subject see vol. 2 Cal. Jur. 922.

9389. Exceptions signed by a judge and filed with the clerk.

Cited in *O'Donnell v. City of Butte*, 72 Mont. 449, 453, 235 Pac. 707.

This and the following section were cited as sections 6787, 6788, Revised

Codes, in *Batchoff v. Butte Pacific Copper Co.*, 60 Mont. 179, 191, 198 Pac. 132.

9390. Exceptions not presented at time of ruling—Notice to adverse party—How settled upon, etc.

The signing of a bill of exceptions is not a part of its settlement; therefore where a bill was actually settled in the county in which the cause was tried by a judge called in from another district, the fact that the bill, not then ready to be signed, was later transmitted to him and signed in the county of his residence, did not render the bill subject to a motion to strike from the files. *Hale et al. v. Belgrade Co., Ltd., et al.*, 75 Mont. 99, 242 Pac. 425.

The time within which a bill of exception must be prepared and settled begins to run from the date of the decision on the motion for a new trial and not from the time of filing the notice of appeal. *Hoppin v. Long*, 74 Mont. 558, 241 Pac. 636.

Timely presentation and signing a bill of exceptions is a jurisdictional question and on the expiration of the time allowed by statute, whether original or extended, the court loses jurisdiction to settle or sign the bill and such action, if done thereafter is a nullity and cannot be considered on appeal, even though opposing counsel should agree to its consideration. *O'Donnell v. City of Butte*, 72 Mont. 449, 235 Pac. 707.

Under this section, where a bill of exceptions appears on the face of the record to have been filed after the time allowed by law, the record must affirmatively show that additional time was allowed upon the filing of an affidavit disclosing necessity for further time; in the absence of such a showing the questions sought to be presented for review by the bill cannot be considered. *O'Donnell v. City of Butte*, 72 Mont. 449, 235 Pac. 707.

Under this section, the appellant from a final judgment desiring to have the proceedings at the trial reviewed, must have them incorporated in a bill of exceptions; if not so incorporated, the appeal may be dismissed. *Atkinson v. Roosevelt County et al.*, 71 Mont. 165, 227 Pac. 811.

On appeal from a final judgment the evidence and proceedings had at the trial can only be reviewed if incorporated in a bill of exceptions settled as provided in this section, and therefore where there was no such bill and the evidence and proceedings were simply certified by the judge and clerk as provided in section 9745 on appeal from an order, review thereof cannot be had. In *re Bitter Root Irr. Dist.*, 67 Mont. 436, 218 Pac. 945.

Where defendant did not present his bill of exceptions to the trial judge for settlement until 172 days after plaintiff had served upon him its proposed amendments, in violation of this section before amendment, which requires presentment of the bill within ten days after service of the proposed amendments, the record being barren of any excuse for the delay, the supreme court will disregard the bill together with all the questions sought to be presented for review thereby. *Commercial Nat. Bank v. Thrasher*, 61 Mont. 242, 201 Pac. 1009.

Cited in *Stabler v. Adamson et al.*, 73 Mont. 490, 495, 237 Pac. 483; *Morehouse v. Northern Land Co.*, 68 Mont. 96, 104, 216 Pac. 792.

Formality in authentication of bill of exceptions, note, 30 A. L. R. 700.

For text treatment of this subject see vol. 2 Cal. Jur. 532, 539 et seq.

9393. Proceedings when judge ceases to hold office.

Cited in *Rickards v. Aultman & Taylor M. Co.*, 64 Mont. 394, 402, 210 Pac. 82.

9394. Bills of exception may contain all material writings.

Cited in *Hale et al. v. Belgrade Co., Ltd.*, 75 Mont. 99, 111, 242 Pac. 425.

CHAPTER 34.

PROVISIONS RELATING TO TRIALS IN GENERAL—NEW TRIALS.

9395. New trial defined.

Cited in *Brunnabend v. Tibbles*, 76 Mont. 288, 296, 246 Pac. 536; as section 6793, Revised Codes, in *In re Stinger*

Estate, 61 Mont. 173, 182, 201 Pac. 693; *Buckhouse v. Parsons*, 60 Mont. 156, 162, 198 Pac. 443.

9396. New trial in equity cases.

Cited in *Merhar v. Powers et al.*, 73 Mont. 451, 454, 236 Pac. 1076.

Sections 9396, 9397 were cited in *Dav-*

enport v. Davenport, 69 Mont. 405, 410, 222 Pac. 422; *Morrow v. Dahl et al.*, 66 Mont. 251, 256, 213 Pac. 602.

9397. When a new trial may be granted.

A motion for a new trial may be made before or after the entry of judgment, the motion not being directed against the judgment, but against the verdict or decision on which a judgment might be based. *Brunnabend v. Tibbles*, 76 Mont. 288, 246 Pac. 536.

Under this section, the jury can impeach their verdict only when arrived at by resort to chance; hence affidavits by six jurors filed in support of a motion for new trial to the effect that two-thirds of the jury were in favor of denying plaintiff the relief sought and would have found in favor of defendant if they had been advised as to a fact the defendant proposed to establish if a new trial was granted, were properly ignored by the trial court. *Komposh v. Powers et al.*, 75 Mont. 493, 244 Pac. 298.

While, under this section, the trial court may remit a portion of a verdict on condition that unless the remission be accepted by the successful party a new trial would be granted, such practice is unwarranted where the verdict was influenced by passion and prejudice; the same rule being applicable, under like circumstances, where the successful party makes voluntary remission of all damages awarded him. *Blessing v. Angell et al.*, 66 Mont. 482, 214 Pac. 71.

Where a new trial was asked for on several grounds, among others newly discovered evidence, in support of the latter of which affidavits had been filed, and the order granting it recited that the motion "came on for hearing upon the affidavits filed by the respective parties," etc., the order was held to have been based upon the ground of newly discovered evidence alone, excluding the other grounds specified. *Ebaugh v. Burns et al.*, 65 Mont. 15, 210 Pac. 892.

Where respondent knew of the testimony an absent witness would give, and should have known that his whereabouts was unknown, but did not ask for a continuance, he was in no position to urge

his evidence as newly discovered. *Ebaugh v. Burns et al.*, 65 Mont. 15, 210 Pac. 892.

Where the notice of intention to move for a new trial specified all but one of the statutory grounds, the order granting it in general terms will be sustained on appeal if it can be upon any one of the grounds mentioned in the notice. *McVey v. Jamison et al.*, 63 Mont. 435, 207 Pac. 633.

Newly discovered evidence which is merely cumulative or which is irrelevant and immaterial furnishes no basis for a motion for a new trial. *Jenkins v. Kitsen*, 62 Mont. 515, 205 Pac. 243.

Where the affidavit of diligence did not mention a witness who made affidavit in support of the motion, there was no showing of diligence as to him and his affidavit therefore furnished no ground for a new trial. *Jenkins v. Kitsen*, 62 Mont. 515, 205 Pac. 243.

Under this section, a new trial—a re-examination of the facts—lies where an error of law has been committed by reason of misapplication of law to the facts. *In re Stinger Estate*, 61 Mont. 173, 201 Pac. 693.

For discussion of the elements of a quotient verdict, see *Zanos v. Great Northern Ry. Co.*, 60 Mont. 17, 198 Pac. 138, and cases therein cited.

Cited in *State v. Gies*, 77 Mont. 62, 64, 249 Pac. 573; *Gardiner v. Eclipse Grocery Co.*, 72 Mont. 540, 547, 234 Pac. 490; *Davenport v. Davenport*, 69 Mont. 405, 410, 222 Pac. 422; *Buckhouse v. Parsons*, 60 Mont. 156, 162, 198 Pac. 443; as section 6794, Revised Codes, in *Casey v. Northern Pacific Ry. Co.*, 60 Mont. 56, 67, 198 Pac. 141.

Inability to perfect record for appeal as ground for new trial, notes, 13 A. L. R. 102; 16 A. L. R. 1158.

Prejudice of jurors concerning contingent fee cases or particular kinds of litigation or defenses as ground for new trial, note, 27 A. L. R. 1052.

New trial because of discussion or consideration of personal experiences of jurors bearing on issues in civil case, note, 46 A. L. R. 1509.

Party against whom verdict is ren-

dered as entitled to new trial on ground of inadequacy of verdict, note, 31 A. L. R. 1091.

For text treatment of this subject see vol. 20 Cal. Jur. 40 et seq.

9398. New trials—On what papers made.

Cited in *Rickards v. Aultman & Taylor M. Co.*, 64 Mont. 394, 401, 210 Pac. 82.

9399. Notice of intention—Contents and service.

A motion for a new trial may be made before or after the entry of judgment, the motion not being directed against the judgment but against the verdict or decision on which a judgment might be based. *Brunnabend v. Tibbles*, 76 Mont. 288, 246 Pac. 536.

A party desiring to move for a new trial must, under this section, serve his notice of motion upon the adverse party within ten days after verdict; if not served within that time it may be stricken from the files. *La Bonte v. Mutual Fire etc. Ins. Co.*, 75 Mont. 1, 241 Pac. 631.

To give the district court jurisdiction over new trial proceedings, the notice of intention—the purpose of which is to bring within its jurisdiction the parties to the action whose interests would be adversely affected by the granting of the motion—must, under this section, be filed within ten days after return of the verdict, and such time cannot be extended

by order of court or stipulation. *Stabler v. Adamson et al.*, 73 Mont. 490, 237 Pac. 483.

Since the enactment of the amendment of this section, the time for filing of notice of motion for a new trial cannot be extended either by order or stipulation, and therefore where such a notice was not filed until after the expiration of ten days it was too late and was properly stricken from the records, the contention that the defect was waived by the actions of opposing counsel being of no avail. *Dilts v. Brooks et al.*, 66 Mont. 346, 213 Pac. 600.

Cited in *Miles v. Miles*, 76 Mont. 375, 383, 247 Pac. 328.

"Until" as word of inclusion or exclusion where one is given until a certain time to perfect his motion for new trial, note, 16 A. L. R. 1096.

For text treatment of this subject see vol. 20 Cal. Jur. 157 et seq.

9400. Hearing of motion—Continuance—Papers used.

Failure of the trial court to pass upon a motion for new trial within fifteen days declared by this section to be equivalent to a denial of the motion, is not reviewable on appeal. *Outlook F. E. Co. v. American S. Co.*, 70 Mont. 8, 223 Pac. 905.

In passing upon a motion for a new trial on the minutes of the court and affidavits filed in support thereof, the court is not bound to take the uncontroverted affidavits as true, but may take into consideration the pleadings, records and evidence and may have recourse to the notes of the court reporter. *Davenport v. Davenport*, 69 Mont. 405, 222 Pac. 422.

A party moving for a new trial is presumed to know that unless decided within fifteen days after its submission, his motion is by operation of law denied, and that if he fails to take an appeal from the judgment within the statutory time, he is in no position to claim that by the above construction of this section he is denied his right of appeal from the judgment. *State ex rel. Sinko v. District Court*, 64 Mont. 181, 208 Pac. 952.

A motion for new trial not decided

within fifteen days after submission is by operation of law denied, this section providing that in that event it shall be deemed denied, and the district court is thereafter deprived of jurisdiction to subsequently make an order granting the motion. *State ex rel. Sinko v. District Court*, 64 Mont. 181, 208 Pac. 952.

The word "deemed" as used in this section is equivalent to or synonymous with the words "considered," "determined," "adjudged," and therefore where something is by statute "deemed" to have been done, it is to be treated as having been done. *State ex rel. Sinko v. District Court*, 64 Mont. 181, 208 Pac. 952.

The provision of this section that if the district court shall fail to decide a motion for new trial within fifteen days after its submission, the motion "shall be deemed denied" is not open to the construction that thereby it is left optional with the moving party to consider the motion denied and appeal from the judgment, or permit it to remain under consideration by the court for so long a time as the court might desire to consider it. *State ex rel. Sinko v. District Court*, 64 Mont. 181, 208 Pac. 952.

Supervisory control lies from an order granting a new trial made after the fifteen days allowed by this section for its decision, where, under the exigencies of the case, the remedy by appeal is inadequate and no other writ is available. *State ex rel. Sinko v. District Court*, 64 Mont. 181, 208 Pac. 952.

In the absence of an affirmative showing that the trial court abused its discretion in hearing a motion for new trial eleven months after notice of the motion,

it will be presumed on appeal that it was heard at the earliest practicable period after notice, as required by this section, where the motion was based upon the minutes of the court. *Price v. Northern Pacific Ry. Co.*, 60 Mont. 166, 198 Pac. 439.

Cited in *O'Donnell v. City of Butte*, 72 Mont. 449, 453, 235 Pac. 707.

For text treatment of this subject see vol. 20 Cal. Jur. 192.

9401. Stay of proceedings, when.

Cited in *Hoppin v. Long*, 74 Mont. 558, 571, 241 Pac. 636.

9402. Contents of record on appeal.

On appeal from a judgment under section 7112, Revised Codes of 1907, before its repeal, a bill of exceptions was properly a part of the record on appeal. *Harrison v. Riddell et al.*, 64 Mont. 466, 210 Pac. 460.

Under this section, before its repeal, it was held that its provisions requiring the record on appeal from a final judgment to contain the judgment and any bills of exception upon which appellant relies, refers to only such bills of exceptions as are settled under sections 9389, 9390 or are used on motion for new trial, and therefore, any bill not so settled or used cannot be considered on such appeal.

Batchoff v. Butte Pacific Copper Co., 60 Mont. 179, 198 Pac. 132.

Under this section and section 7114 before repeal, the record on appeal from an order overruling a motion for a new trial, must among other things, contain the judgment-roll or such parts thereof as may be necessary to be considered on the appeal. *Minneapolis T. M. Co. v. Stanford M. Co.*, 59 Mont. 359, 197 Pac. 993.

Cited in *Great Falls Nat. Bank v. Young et al.*, 67 Mont. 328, 334, 215 Pac. 651; as section 6799, Revised Codes in *Easton v. Western Life & Casualty Co.*, 59 Mont. 434, 435, 197 Pac. 252.

CHAPTER 35.

THE MANNER OF GIVING AND ENTERING JUDGMENT.

9406. In replevin, judgment to be in the alternative, and with damages.

Under this section, the judgment in a claim and delivery action must be in the alternative; hence, a judgment in favor of plaintiff simply for the value of the chattel taken was erroneous. *Kesley v. Yadish et al.*, 66 Mont. 23, 212 Pac. 495.

This section applies only to a case

which has been tried on the merits. *Barratt v. Shipley*, 63 Mont. 152, 206 Pac. 430.

Cited in *Dalke v. Pancoast*, 63 Mont. 524, 527, 208 Pac. 589.

For text treatment of this subject see vol. 5 Cal. Jur. 199 et seq.

9409. Judgment-roll — Contents and filing. Immediately after entering the judgment the clerk must attach together and file the following papers, which constitute the judgment-roll:

(1) In case no defendant has appeared, the summons, with the affidavit or proof of service, and the complaint, with a memorandum indorsed thereon, that the default of the defendant in not answering was entered, and a copy of the judgment and in case the service so made is by publication the affidavit for publication of summons, and the order directing the publication of summons;

(2) In all other cases, the pleadings, a copy of the verdict of the jury, or finding of the court or referee, all bills of exceptions taken and

filed, all orders, matters, proceedings deemed excepted to without bill of exceptions, and a copy of any order made on demurrer or relating to a change of parties, and a copy of the judgment. If there are two or more defendants in the action, and any one of them has allowed judgment to pass against him by default, the summons, with proof of service of it upon such defendant and if the service on such defaulting defendant be by publication, then the affidavit for publication and the order directing the publication of the summons, must also be added to the other papers mentioned in this subdivision.

Amd. Sec. 1, Ch. 146, L. 1925.

The service of an amended complaint performs the same function as the service of summons in the first instance, and on appeal from a default judgment the record must disclose acquisition of jurisdiction over the defendant by service of the amended pleading, or waiver thereof, the presumption of jurisdiction in such

case not obtaining. *Griffith v. Montana W. G. Assn.*, 75 Mont. 466, 244 Pac. 277.

Cited as section 6806, Revised Codes, in *Batchoff v. Butte Pacific Copper Co.*, 60 Mont. 179, 190, 198 Pac. 132.

For text treatment of this subject see vol. 2 Cal. Jur. 509.

9410. Judgment lien—When it begins and when it expires.

In order to preserve the priority obtained by a judgment lien on real property, a sale under execution must be made during the life of such lien, six years from the date of judgment under this section, or execution must have been issued and proceedings on judicial sale begun before the lien becomes barred, and to avoid operation of such bar the sale must be proceeded with without any delay

greater than is permitted by section 9419, the mere issuance of execution being of no avail. *Marlowe v. Missoula Gas Co. et al.*, 68 Mont. 372, 219 Pac. 1111.

Cited in *Leonard v. Western et al.*, 74 Mont. 513, 522, 241 Pac. 523.

For text treatment of this subject see vol. 15 Cal. Jur. 215.

9413. Transcript to be filed in any county and judgment to become a lien there.

The effect of filing in a county other than that in which a money judgment was rendered a certified transcript of the docket is to impress a lien upon all real property owned by the judgment debtor in the county of its filing, not exempt from execution or acquired by him thereafter and prior to the expiration of the

lien or the satisfaction of the judgment, the lien, however, not attaching to any specific piece of property. *Poulos v. Lyman Brothers Co.*, 63 Mont. 561, 208 Pac. 598.

For text treatment of this subject see vol. 15 Cal. Jur. 229.

CHAPTER 36.

THE EXECUTION—RETURN OF SALE.

9419. When made returnable.

Cited in *Marlowe v. Missoula Gas Co. et al.*, 68 Mont. 372, 219 Pac. 1111; *State*

ex rel. Duggan v. District Court, 65 Mont. 197, 202, 210 Pac. 1062.

9424. What shall be liable on execution—Not affected until levy.

A cause of action being personal property not capable of manual delivery, levy of execution upon it must, under this section, be made in like manner as upon a writ of attachment, which is, under subdivision 5 of section 9262, by leaving a copy of the writ, and a notice that the

cause of action is levied upon, with the owner; hence where the copy and notice were delivered to the clerk of the district court and not to the owner, the levy was ineffective. *State ex rel. Coffey v. District Court*, 74 Mont. 355, 240 Pac. 667.

Cited in *Northern Montana State Bank*

v. Collins, 67 Mont. 575, 584, 216 Pac. 330; State ex rel. Hopkins v. Stephens, 63 Mont. 318, 322, 206 Pac. 1094.

Seat in chamber of commerce, board of trade or stock exchange as subject of attachment, garnishment or execution, note, 14 A. L. R. 284.

Money or other property taken from

prisoner as subject of attachment or seizure under execution, notes, 16 A. L. R. 378; 45 A. L. R. 574; 48 A. L. R. 583.

Levy of contents of safe deposit box, notes, 11 A. L. R. 225; 19 A. L. R. 863; 39 A. L. R. 1215.

For text treatment of this subject see vol. 15 Cal. Jur. 1015.

9427. Property exempt from execution.

While exemption statutes must be liberally construed, yet where an exemption is extended to a certain class of persons, as by this section and 9428, the claimant must bring himself within the spirit of its provisions, i. e., he must show

that he belongs to one of the classes mentioned. Swanz v. Clark, 71 Mont. 385, 229 Pac. 1108.

For text treatment of this subject see vol. 12 Cal. Jur. 331.

9428. Specific exemptions.

An optometrist, one who practices optometry, recognized by the legislature as a branch of the medical science, is neither a mechanic nor an artisan, and that therefore his tools and implements, such as an ophthalmometer, retinoscope, etc., are not exempt from attachment under subdivi-

sion 2 of this section. Swanz v. Clark, 71 Mont. 385, 229 Pac. 1108.

What are "tools," "implements," "instruments," "utensils," or "apparatus," note, 36 A. L. R. 669.

For text treatment of this subject see vol. 12 Cal. Jur. 331.

9434. Sale—How conducted.

Cited in Elston v. Hix et al., 67 Mont. 294, 298, 215 Pac. 657.

9440. Personal property, not capable of manual delivery—How delivered.

Cited in State ex rel. Coffey v. District Court, 74 Mont. 355, 367, 240 Pac. 667.

9441. Real property—When sale absolute, and what certificate to contain.

The purchaser on execution sale becomes the actual owner of the property, subject only to the right of redemption, and as such is entitled to protect his interests and to contest the right of the assignee of a subsequent judgment to redeem. Leonard v. Western et al., 74 Mont. 513, 241 Pac. 523.

Under a mortgage of the entire property of a public utility or common carrier, consisting of real and personal property and franchises, and sold on foreclosure in its entirety, the right of redemption does not exist as to any part of it, since severance of a part of the property from the rest would be injurious to if not destructive of the whole. State

ex rel. Continental Supply Co. v. Tullock 68 Mont. 268, 217 Pac. 348.

Under this section the purchaser at a foreclosure sale is substituted to and acquires all the interest of the judgment debtor in the property sold, leaving in the judgment debtor only the bare right to redeem. Citizens' Nat. Bank v. Western L. & B. Co., 64 Mont. 40, 208 Pac. 893.

Cited in Beck v. Felenzer et al., 69 Mont. 592, 598, 223 Pac. 499; State ex rel. Hopkins v. Stephens, 63 Mont. 318, 321, 206 Pac. 1094.

For text treatment of this subject see vol. 11 Cal. Jur. 84, 126.

9441.1. Return of sales of real estate—Recording. Where real estate is sold under a decree of court, return of such sale shall be made, and filed in the office of the clerk of court. The clerk shall record the return so made, the same as if it were to an execution wherein a levy upon real estate has been made; provided, that where the return contains a true

copy of the decree of court under which such sale was made, the clerk shall record all of the return except such copy of the decree, and in lieu of recording such copy, shall insert in the record the following:

"The original judgment and decree, the true copy which is set forth in this return, is recorded in Judgment Book, at pages to, inclusive, thereof."

En. Sec. 1, Ch. 42, L. 1927.

9442. Real property sold—How redeemed—Who are redemptioners.

Property sold subject to redemption, as provided by the last section, or any part sold separately, may be redeemed in the manner hereinafter provided, by the following persons, or their successors in interest:

1. The judgment debtor, his wife, or his successor in interest, in the whole or any part of the property, and if the judgment debtor or successor be a corporation, then by a stockholder thereof;

2. A creditor having a lien by judgment, mortgage, or attachment on the property sold, or on some share or part thereof, subsequent to that on which the property is sold. If a corporation be such creditor, then any stockholder thereof may redeem. The persons mentioned in the second division of this section are, in this chapter, termed "redemptioners."

Amd. Sec. 1, Ch. 16, L. 1927.

Where the judgment debtor paid the amount of the judgment into court, and the creditor accepted the amount in full payment of the judgment and the same was satisfied of record, before redemption had been completed by the creditor, the right to redeem was lost by such acceptance. *Leonard v. Western et al.*, 74 Mont. 513, 241 Pac. 523.

The statutory right of redemption is not property in any sense of the term, but is a bare personal privilege, and therefore may not be attached. *State ex rel. Hopkins v. Stephens*, 63 Mont. 318, 206 Pac. 1094.

Where real property had been sold on mortgage foreclosure and a creditor of

the judgment debtor levied a writ of attachment on it before the period of redemption had expired, he acquired no lien by virtue of it, and therefore did not become a redemptioner within the meaning of subdivision 2 of this section so as to entitle him to a sheriff's deed. *State ex rel. Hopkins v. Stephens*, 63 Mont. 318, 206 Pac. 1094.

Receiver's right to redeem from judicial or execution sale of insolvent's property, note, 35 A. L. R. 262.

Stockholder's right to redeem corporate property, note, 39 A. L. R. 1056.

For text treatment of this subject see vol. 11 Cal. Jur. 97; vol. 18 Cal. Jur. 591.

9443. Redemption money.

The term "redeem" as employed in the redemption statute means repurchase, and, as applied to a redemptioner, signifies the right to purchase the interest acquired by the purchaser at execution sale, whether the latter is willing or not. *Leonard v. Western et al.*, 74 Mont. 513, 241 Pac. 523.

A redemptioner, proceeding under this section, must within one year from date of execution sale tender or pay the amount paid by the purchaser with interest up to the time of redemption; where, however, he proceeds under section 9448 and asks for an accounting of the rents and profits received by the purchaser, a tender is not necessary until an accounting has been made, either voluntarily, in

which event the period of redemption is extended five days after it is made, or compulsory by means of a suit in equity, in which case the period if extended fifteen days after final determination of the suit, but the redemption is not completed until the accounting is had, and the amount due determined and paid or tendered within time. *Leonard v. Western et al.*, 74 Mont. 513, 241 Pac. 523.

Where a redemptioner, proceeding under this section, deposited with the sheriff the amount paid by the purchaser at execution sale with interest, and at the same time demanded an accounting of the rents and profits received by the latter, which could only be done under section 9448, the attempt to redeem under

the former section was nullified and therefore the redemption not completed by the deposit. *Leonard v. Western et al.*, 74 Mont. 513, 241 Pac. 523.

For text treatment of this subject see vol. 11 Cal. Jur. 101-106; vol. 18 Cal. Jur. 590.

9444. When judgment debtor or redemptioner may redeem — Corporation and stockholders. If property be so redeemed by a redemptioner, another redemptioner may, within sixty (60) days after the last redemption, again redeem it from the last redemptioner on paying the sum on such last redemption, with interest thereon at the rate of one per cent (1%) per month in addition, and the amount of any assessment or taxes which the last redemptioner may have paid thereon after the redemption by him, with like interest on such amount, and, in addition, the amount of any liens held by the said last redemptioner prior to his own, with interest; but the judgment under which the property was so sold need not be so paid as a lien. The property may be again, and as often as any redemptioner is so disposed, redeemed from any previous redemptioner, within sixty (60) days after the last redemption, on paying the sum paid on the last previous redemption, with interest thereon at the rate of one per cent (1%) per month, and the amount of any assessment or taxes which the last previous redemptioner paid after the redemption by him, with like interest thereon, and the amount of any liens, other than the judgment under which the property was sold, held by the last redemptioner previous to his own, with like interest. Written notice of redemption must be given to the sheriff, and a duplicate filed with the county clerk, and if any taxes or assessments are paid by the redemptioner, or if he has or acquired any liens other than that upon which the redemption was made, notice thereof must in like manner be given to the sheriff and filed with the county clerk; and if such notice be not filed, the property may be redeemed without paying such tax, assessments, or lien. If no redemptioner be made within one year after the sale, the purchaser, or his assignee, is entitled to a conveyance; or, if so redeemed, whenever sixty days have elapsed, and no other redemption has been made, and notice thereof given, and the time for redemption has expired, the last redemptioner, or his assignee, is entitled to a sheriff's deed; but in all cases, the judgment debtor shall have the entire period of one year from the date of the sale to redeem the property. If the judgment debtor or his wife redeem, he or she must make the same payments as are required to effect a redemption by a redemptioner. If the debtor redeem, the effect of the sale is terminated, and he is restored to his estate. If the wife redeem, she shall become the owner of her husband's interest, subject to any liens thereon at the time of the execution sale. Upon a redemption by a debtor, or his wife, the person to whom the payment was made must execute and deliver to him or her a certificate of redemption, acknowledged or proved before an officer authorized to take acknowledgments of conveyances of real property. Such certificate must be filed and recorded in the office of the county clerk of the county in which the property is situated, and the county clerk must note the record thereof in the margin of the record of the certificate of sale.

If a stockholder of a corporation redeems, the corporation, within one (1) year after the date of sale, may redeem by paying to the redemp-

tioner, or the sheriff for his benefit, the amount paid to effect the redemption, with interest thereon at the rate of one per cent (1%) per month from the date of redemption until the date of such payment, together with any taxes or assessments that may have been paid by the redemptioner, with like interest thereon. When a stockholder redeems, any other stockholder or stockholders may, at any time after such redemption, and within sixty (60) days after the expiration of one (1) year from the date of sale, contribute to the redemption by paying to the redeeming stockholder, or depositing with the sheriff for his benefit, a sum which bears the same proportion to the amount necessary to redeem which the number of shares owned by such contributing stockholder or stockholders bears to the number of shares of such corporation outstanding, with interest on such sum from the date of redemption until the date of contribution at the rate of one per cent (1%) per month, together with a like proportion of the taxes or assessments paid by such redeeming stockholder, with like interest thereon, and if the corporation does not redeem the property within the time and in the manner and form as aforesaid, the said redeeming and contributing stockholders shall be entitled to receive a sheriff's deed for such property so redeemed, and shall succeed to the said property as tenants in common in such proportions, respectively, as they shall respectively pay or contribute to such redemption as aforesaid. The redeeming or contributing stockholder shall, in all cases when applying to redeem or contribute as aforesaid, present an affidavit, setting forth the number of shares of stock owned by him, and to the best of his knowledge, the number of shares of stock of the corporation outstanding.

If the wife of a judgment debtor redeem, the husband, within one year after the date of sale, may redeem by paying the wife or her successors in interest or the sheriff for her or their benefit, the amount paid to effect the redemption, with interest thereon at the rate of one per cent (1%) per month from the date of redemption until the date of such payment, together with any taxes or assessments that may have been paid by the wife or her successors in interest, with like interest thereon.

Amd. Sec. 2, Ch. 16, L. 1927.

For text treatment of this subject see

Cited in *State ex rel. Hopkins v. Stephens*, 63 Mont. 318, 321, 206 Pac. 1094.

vol. 11 Cal. Jur. 101.

9445. To whom payment may be made.

Cited in *Wells-Dickey Co. v. Benjamin*, 74 Mont. 170, 173, 239 Pac. 771.

9446. What papers necessary in redemption.

Cited in *Leonard v. Western et al.*, 74 Mont. 513, 516, 241 Pac. 523.

9448. Who entitled to rents and profits.

Since the right to redeem is purely statutory, a redemptioner availing himself of the provisions of this section, under which the amount he has to pay to the purchaser may be much less than he would have to pay if proceeding under section 9443, and under which the time within which redemption may be

made is extended, must assume its burdens in order to enjoy its benefits. *Leonard v. Western et al.*, 74 Mont. 513, 241 Pac. 523.

In the absence of any showing of wilful default or negligence on the part of the purchaser of realty at foreclosure sale, the redemptioner is entitled, under

this section, to demand an accounting by notice or suit in equity, only to the rents and profits actually received by the former. *Citizens' Nat. Bank v. Western L. & B. Co.*, 64 Mont. 40, 208 Pac. 893.

In an action for an accounting by a redemptioner against the purchaser at foreclosure sale for rents and profits received by the latter, held, that the word "tenant" used in this section, in providing that a redemptioner is entitled

to receive from the tenant in possession the rents of the property, etc., is not to be construed in its strict or technical sense, but as indicating one who holds possession of the land by any kind of title, either in fee, for life, for years, at will or at sufferance. *Citizens' Nat. Bank v. Western L. & B. Co.*, 64 Mont. 40, 208 Pac. 893.

Cited in *Dyer v. Schmidt et al.*, 67 Mont. 6, 7, 213 Pac. 1117.

9449. Possession of lands during period of redemption.

Application for writ of assistance for possession of land by purchaser on foreclosure denied in State ex rel. Kester v. District Court, 74 Mont. 100, 238 Pac. 875.

The purchaser of real property on mortgage foreclosure is entitled to possession during the period of redemption (except where the mortgagor occupies the land as a home for himself and his family), as against the judgment debtor and those claiming under him by leases made to them after the sale. *Dyer*

v. Schmidt et al., 67 Mont. 6, 213 Pac. 1117.

Cited in *Union Central Life Ins. Co. v. Jensen*, 74 Mont. 70, 80, 237 Pac. 518; *State ex rel. Flowerree v. District Court*, 71 Mont. 89, 227 Pac. 579; *Citizens' Nat. Bank v. Western L. & B. Co.*, 64 Mont. 40, 47, 208 Pac. 893.

For text treatment of this subject see vol. 11 Cal. Jur. 136; vol. 15 Cal. Jur. 311.

9453. Deeds for sales heretofore made. All judicial sales of real property which previous to January 1, 1925, (provided no action is now pending to set such sale aside), were made in this state on proceedings to satisfy valid judgments or decrees of any court and the moneys bidden thereon paid to the officer making such sale, shall be valid and sufficient in law to sustain a sheriff's deed based on such sale, and when no such deed has been executed, shall entitle such purchaser to such deed; and such deed if now or when executed shall be sufficient to convey all the title of judgment debtor at the time of such sale in the premises so sold to the purchaser at said sale, and all defects or irregularities in the issuance of execution, or the manner of making or conducting the sale, or in the recitals or references in such deed, shall be disregarded and such sale shall not be invalidated by reason of any such defect or irregularity.

Amd. Sec. 1, Ch. 22, L. 1925.

CHAPTER 37.

PROCEEDINGS SUPPLEMENTARY TO THE EXECUTION.

9455. Proceedings to compel debtor to appear—In what cases he may be arrested—What bail may be given.

Cited as section 6849, Revised Codes, in *Mannix v. Powell County*, 60 Mont. 510, 514, 199 Pac. 914.

9459. Judge may order property to be applied on execution.

In proceedings supplemental to execution the only powers possessed by the court are those given it by this section and 9460. *Johnson et al. v. Lundeen et al.*, 61 Mont. 145, 200 Pac. 451.

For text treatment of this subject see vol. 11 Cal. Jur. 153.

9460. Proceedings upon claim of another party to property, or on denial of indebtedness to judgment debtor.

An affidavit on which relief by supplementary proceedings was asked, setting forth no more than the entry of judgment and issuance of execution thereon, thus failing to disclose that the judgment was then unpaid, in whole or in part, or that it had been returned unsatisfied or could not be satisfied out of property other than that claimed by an intervener, an order refusing to permit the creditor to bring an action against the latter under this section was correct. *Missoula etc. Bank v. Insurance Co.*, 61 Mont. 370, 203 Pac. 854.

Where in proceedings supplemental, the

garnishee denies any indebtedness to the judgment debtor, the court has no authority to try the question and order payment to be applied to the satisfaction of the judgment, but must either order the judgment creditor to institute an action to determine the fact in dispute or discharge the garnishee. *Johnson et al. v. Lundeen et al.*, 61 Mont. 145, 200 Pac. 451.

For text treatment of this subject see vol. 7 Cal. Jur. 789; vol. 11 Cal. Jur. 158.

CHAPTER 38.

ACTIONS FOR FORECLOSURE OF MORTGAGES.

9467. Proceedings in foreclosure suits.

An action to foreclose a mortgage is one in equity which is not changed into one at law by pleadings which raise issues of law on questions incidental to the principal relief sought by plaintiff, and therefore defendant is not entitled to a jury trial. *Rochester v. Bennett*, 74 Mont. 293, 240 Pac. 384.

A grantee of a mortgagor who expressly assumes to pay an outstanding mortgage on the personal property purchased thereby also assumes the contingent personal liability to pay a deficiency judgment in case the premises fail to sell for a sum sufficient to discharge the debt and costs. *Kinyon Inv. Co. v. Belmont State Bank*, 69 Mont. 282, 221 Pac. 286.

In an action to foreclose a mortgage on land the district court, under this section, authorizing it to direct the sale of the property but not prescribing the mode of its sale—whether in separate parcels or in one body—may in its discretion direct the manner of its sale. *Elston v. Hix et al.*, 67 Mont. 294, 215 Pac. 657.

Plaintiff by commencing an action to foreclose his mortgage upon land did not waive his claim upon wheat grown thereon, possession of which had been turned over to him by the mortgagors, but which was not covered by mortgage, the restriction found in this section not including personal or collateral security not falling fairly within the meaning of the term "mortgage." *Craig v. Burns et al.*, 65 Mont. 550, 212 Pac. 856.

Cited in *Oregon Mortgage Co. v. Kunneke et al.*, 76 Mont. 117, 125, 245 Pac. 539; *Vande Veegaete v. Vande Veegaete*, 75 Mont. 52, 56, 243 Pac. 1082.

Sections 9467-9469 were cited in *Wood v. Ferguson et al.*, 71 Mont. 540, 548, 230 Pac. 592; *State ex rel. Continental S. Co. v. Tullock*, 68 Mont. 268, 277, 217 Pac. 348.

For text treatment of this subject see vol. 18 Cal. Jur. 235, 341, 454, 496, 501.

9470. Power of sale.

Sections 9470-9472 were cited in *Union Central Life Ins. Co. v. Jensen*, 74 Mont. 70, 75, 237 Pac. 518.

9472. Rights of redemption applicable.

Cited in *State ex rel. Continental S. Co. v. Tullock*, 68 Mont. 268, 277, 217 Pac. 348.

CHAPTER 39.

ACTIONS FOR NUISANCE, WASTE AND WILFUL TRESPASS ON REAL PROPERTY.

9476. Trespass for cutting or carrying off trees, etc., action for.

Cited in *Tripp v. Silver Dyke Mining Co.*, 70 Mont. 120, 128, 224 Pac. 272.

CHAPTER 40.

ACTIONS TO QUIET TITLE TO REAL PROPERTY AND OTHER PROVISIONS
RELATING TO ACTIONS CONCERNING REAL ESTATE.

9479. Actions to quiet title—Parties to, and venue.

In an action to quiet title under this section, as distinguished from one brought under section 8733 to remove a cloud on title, the complaint alleging that the defendant claims an adverse estate or interest is sufficient without further defining it, whereas under the latter section the pleader must state facts disclosing the apparent validity of the instrument attacked and its actual invalidity. *Slette v. Review Publishing Co.*, 71 Mont. 518, 230 Pac. 580.

For allegations sufficient to state a cause of action to quiet title, see *Violet et al. v. Martin*, 62 Mont. 335, 205 Pac. 221.

Under this section, an action lies to quiet title to an easement to a right of way for a ditch as against a county in exclusive use of the land for highway purposes. *Mannix v. Powell County*, 60 Mont. 510, 199 Pac. 914.
Cited in *Solberg v. Sunburst Oil & Gas Co. et al.*, 70 Mont. 177, 183, 225 Pac. 612; *O'Hanlon et al. v. Ruby Gulch Mining Co.*, 64 Mont. 318, 325, 209 Pac. 1062.

For text treatment of this subject see vol. 22 Cal. Jur. 114-117, 139-142.

9485. Title form of summons — Publication — When service deemed complete. The summons to be published under the preceding sections shall be in substantially the following form:

(Title of court and cause.)

“The state of Montana to (naming known defendants upon whom service by publication is sought), and to all other persons, unknown, claiming, or who might claim, any right, title, estate, or interest in, or lien or incumbrance upon, the real property described in the complaint, or any thereof, adverse to plaintiff’s ownership, or any cloud upon plaintiff’s title thereto, whether such claim or possible claim be present or contingent, including any claim or possible claim of dower, inchoate or accrued, Greeting;

You are hereby summoned to answer the complaint in this action which is filed in the office of the clerk of this court, a copy of which is herewith served upon you, and to file your answer and serve a copy thereof upon the plaintiff’s attorney within twenty days after the service of this summons, exclusive of the day of service; and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

This action involves the title to the following described lands, to wit: [Here insert description of land.]

The nature of the relief sought by the plaintiff is as follows: [Here set forth in concise form the character of relief sought.]

Witness my hand and the seal of said court this day of

.....
Clerk of the above entitled court.”

Such summons shall be published at least once in each week for a period of four weeks, in some newspaper of general circulation, printed and regularly published at least once a week in the county in which the action is brought, or, if there is no such newspaper printed in such county, then such summons shall be published in like period, in the nearest

county in which such a newspaper is printed, preference to be given, first, to an adjoining county in which any portion of the property is situated, if situated in more than one county; and, second to any adjoining county. Service shall be deemed complete on the day of the fourth publication.

Amd. Sec. 1, Ch. 55, L. 1923.

9487. Title jurisdiction acquired by service—Effect of decree—Evidence to support—Reduction of testimony to writing. Upon the service of summons on all defendants, known and unknown, in the manner provided in the preceding sections, the court in which such action is tried shall have jurisdiction to make a complete adjudication of the title to the lands named in the complaint, and the title to which is sought to be quieted, including jurisdiction to direct the cancellation of instruments constituting clouds upon such title, the execution of conveyances, where it appears that any party to such action should execute such conveyance or conveyances, the execution of satisfactions of mortgages and other apparent liens upon such land, or any part thereof, or the doing of any other act of a personal nature necessary to give effect to the rights of the respective parties to such action, as the same may be adjudicated by the court. When any judgment or decree shall be rendered in such action, for a conveyance, release, or acquittance, as above mentioned, and the party or parties against whom the judgment or decree shall be rendered do not comply therewith, within the time specified in said judgment or decree for such compliance, such judgment or decree shall have the same operation and effect, and be as available, as if the conveyance, release, or acquittance had been executed conformably to such judgment or decree. Before plaintiff shall be entitled to a decree in such action against any defendant who shall not appear therein, he must produce evidence sufficient to *prima facie* entitle him to relief, and relief shall be granted only to the extent to which such evidence shall *prima facie* prove him to be entitled to the same; but this provision shall not affect the procedure in or manner of trial of such actions as between the plaintiff and any defendant who shall appear in such action.

Amd. Sec. 2, Ch. 55, L. 1923.

9495. Mortgage not deemed conveyance, whatever its terms—Recovery of possession by mortgage.

This section, providing that a mortgage of real property is not to be deemed a conveyance so as to entitle the mortgagee to recover possession independent of foreclosure, has reference only to mortgages wherein no provision is made conferring upon the mortgagee the right of possession upon condition broken. Union

Central Life Ins. Co. v. Jensen, 74 Mont. 70, 237 Pac. 518.

Cited as section 6877, Revised Codes, in Stack v. Coyle, 59 Mont. 444, 197 Pac. 747.

For text treatment of this subject see vol. 17 Cal. Jur. 695, 706, 740, 1011, 1043.

9500. Adverse claims under acts of congress.

Cited in O'Hanlon et al. v. Ruby Gulch Mining Co., 64 Mont. 318, 325, 209 Pac. 1062.

9501. Action to establish title to property granted to heirs of deceased entryman.

In an action brought under sections 9501-9515, to establish title to property granted by patent to heirs of deceased entrymen on public lands, being essentially equitable in character, the court, once having obtained jurisdiction over

the subject matter and the parties, will retain jurisdiction for the purpose of administering complete relief and doing entire justice. *Raistakka v. Fagerstrom et al.*, 64 Mont. 173, 208 Pac. 949.

CHAPTER 41A.**SALES AND LEASES OF TRUST PROPERTY UNDER ORDER OF COURT.****9575.1. Court may authorize sales or leases of trust property when.**

When any trust is expressed in the instrument creating the trust estate, every sale, conveyance or other act of the trustee in contravention of the trust shall be absolutely void, except as in this act provided. The district court of the county wherein the property, whether real or personal, or any part thereof, held in trust is situate may by order, on such terms and conditions as seem just and proper, authorize any such trustee, whether he be beneficially interested in such trust property or not, to sell or otherwise dispose of, or lease the property, for the development of its mineral resources, or mortgage all or any part of such trust property, whether real or personal, whenever it appears to the satisfaction of the court that it is necessary, or for the benefit, or for the best interest of the trust estate, or of the person or persons beneficially interested therein holding the first and present estate, interest or use, and that it will do no substantial injury to the heirs or next of kin, or others in succession, expectancy, reversion or remainder, in respect of such property.

En. Sec. 1, Ch. 110, L. 1925.

9575.2. Leases, when authorized. The district court may, by order, on such terms and conditions as seem to it just and proper, authorize such trustee to lease such property for a term exceeding five (5) years, if it appears to the satisfaction of the court that it is for the best interest of the trust estate, and may authorize such trustee to covenant in the lease to pay, at the end of the term or any renewal term, to the lessee, the then fair and reasonable value of any buildings and improvements which may have been erected or placed on the leased premises during such term or renewal term.

En. Sec. 2, Ch. 110, L. 1925.

9575.3. Mineral lease, when authorized. The district court may, by order, on such terms and conditions as may be just and proper, authorize such trustee to lease such property for the purpose of developing the mineral resources of the same for a term of years under the usual terms and conditions and under such terms and conditions as to the court may seem just and equitable.

En. Sec. 3, Ch. 110, L. 1925.

9575.4. Procedure on petition to court for order. Application to the court for such order to sell or otherwise dispose of, or mortgage such

trust property, real or personal, or any part thereof, or to lease such trust property, real or personal, or any part thereof, shall be by duly verified petition made by such trustee, or any person beneficially interested in such property. Such petition shall set forth the nature of the trust estate, the particular facts making it necessary or proper for the application to be granted, a description of the trust property to be sold or otherwise disposed of, or mortgaged, or leased, and the interest of the petitioner therein. Such petition and the notice of hearing thereof shall set out, so far as appears of record or as known to the petitioner, the names, and in addition such petition shall set out the places of residence of all persons, who have any right, title, interest, estate or lien, and the nature thereof, in or upon the trust property, or who, by the terms of the instrument creating the trust, may at any time thereafter have any such right, title, interest, estate or lien, and the nature thereof. If there be persons having, or claiming to have, or who, at any time thereafter, may have any interest in the trust property, whose names are unknown, it shall be lawful to include such persons in such petition and the notice of hearing thereof, by the name and description of unknown persons interested in the trust property, and, to that end, such petition and notice, in addition to setting out the names of the persons aforesaid, may contain the following:

“Also all other persons unknown, having, or claiming to have, or who at any time may have any right, title, interest, estate or lien in or upon the trust property.” Such petition, together with a copy, annexed thereto, of the deed, will or other written instrument creating the trust estate, shall be filed in the office of the clerk of the district court of the county wherein such property, or some part thereof, is situate. Upon the filing of any such petition, the district court shall, by order, fix a time and place of hearing the same. Such hearing may be at chambers, or at a general or special term of the court wherein the proceedings are pending.

En. Sec. 4, Ch. 110, L. 1925.

9575.5. Notice of hearing—Publication. Notice of such hearing stating the time and place thereof and the objects of the petition shall be served upon all persons named in the petition as having any right, title, interest, estate or lien in or upon the trust property, or who, by the terms of the instrument creating such trust, may, at any time thereafter, have any such right, title, interest, estate or lien. Such notice shall be served, in the same manner as a summons in a civil action, at least ten (10) days before such time of hearing. If any such person, whose name is set out in the petition, be not a resident of the state, or if his place of residence is unknown to the petitioner, then, upon the filing in said court of an affidavit of the petitioner, his agent or attorney, alleging that he believes that such person is not a resident of the state, and that he has mailed a copy of such notice to him at his last known place of residence, or that his place of residence is not known and cannot be ascertained by the affiant, the service of such notice upon such person may be made by publication thereof for two (2) successive weeks in a regularly published newspaper, of general circulation, in the county wherein such proceedings are pending, or, if no such newspaper be published in such county, the

publication may be made in such newspaper published in an adjoining county. Service of such notice may be had upon all persons named and described in such petition and notice, as unknown persons interested in the trust property, by publication of such notice in the same manner and for the same time, as in the case of nonresidents whose names are set out in the petition, upon the filing in said court of an affidavit by the petitioner, his agent or attorney, stating that there are, or that affiant is informed or believes there are, certain persons, in addition to those whose names are set out in such petition, who have, or claim to have, or may have some right, title, interest, estate or lien in or upon the trust property, the nature of which is, as well as the names and places of whom are, to affiant unknown.

En. Sec. 5, Ch. 110, L. 1925.

9575.6. Notice to minors and persons of unsound mind. In case any person, whose name is set out in such petition, is a minor or a person of unsound mind, such notice of hearing shall be served upon the duly appointed guardian, or other legal representative of such person, if any. If there be none, then the district court in which such proceedings are pending shall appoint a guardian, ad litem, for such person and may compel the person so appointed to act. In such case, service of such notice of hearing shall be had by service on such guardian, ad litem.

En. Sec. 6, Ch. 110, L. 1925.

9575.7. Hearing—Order—Confirmation—Bonds. Upon proof being filed of the service of such notice, the court, at the time and place therein fixed or to which the hearing may be adjourned, shall hear all competent evidence offered for and against the granting of such petition, regulating the order of proof, as it may deem best, and shall make and enter a final order upon the application. If the application is granted, the final order shall authorize the sale or other disposition, or the mortgaging or leasing, as the case may be, of such trust property, or part thereof, in manner and upon such terms as the court may prescribe. Any such sale or other disposition, mortgaging or leasing of such trust property, by such trustee, shall be reported to the court for confirmation and confirmed by the court, before the same shall become effective and valid. Upon such confirmation, such trustee shall make, execute and deliver, subject to such terms and conditions as the court in its order of confirmation may impose, good and sufficient instruments of conveyance, assignment, and transfer, or mortgage, or lease, as the case may be. On receipt by such trustee of the money, or other proceeds derived from any such sale or other disposition, or mortgaging or leasing of such trust property, such money or other proceeds shall be held, administered, distributed or otherwise dealt with by such trustee under and pursuant to the terms of the deed, will or other written instrument creating the trust estate, but subject, at all times to the direction and order of the court. The court, in its discretion, may require such trustee to give bond in such amount and with such sureties as the court shall direct, conditioned for accounting for all such money or

other proceeds so received by such trustee, and for the faithful discharge of his trust.

En. Sec. 7, Ch. 110, L. 1925.

9575.8. Effect of final order — Appearance unknown persons. The final order of the court in such proceedings, made or had with respect to such unknown persons, shall have the same effect and be as binding and conclusive upon them, as though they had been named and described in such petition and notice by their proper names; provided, that, all such unknown persons, so served as in this act provided, shall have the same right to appear and oppose the granting of such petition, before the making of such final order, and the same right to appear and object to such order and the granting thereof, after such order has been made and entered, as persons would have, who are named and described by their proper names in such petition and notice, and have been served with such notice by publication, as provided in this act; and provided, further, that if any such unknown persons be minors without guardian, ad litem, or other guardian or legal representative, duly appointed, when such order is made, they may be allowed to appear and object to such order and the granting thereof at any time within one (1) year after becoming of age.

En. Sec. 8, Ch. 110, L. 1925.

9575.9. Effect of order. The final order of the court in such proceedings, and every deed or other instrument of conveyance, assignment, transfer, mortgage or lease made, executed and delivered by such trustee, pursuant to any such final order, shall be valid and effectual against all persons whose names are set out in such petition, and all persons therein named and described as unknown persons interested in the trust property, served with notice of hearing as in this act provided, or appearing voluntarily in the proceedings and consenting to the granting of such order, whether such persons, or any of them, are in being or not in being, and whatever the nature of their interest and estate in the trust property, whether vested or contingent, in expectancy, in reversion or in remainder, or otherwise, at the time of the granting of such order.

En. Sec. 9, Ch. 110, L. 1925.

9575.10. Responsibility of parties dealing with trustee. Any person who shall actually and in good faith pay to any such trustee any money or other proceeds derived from the sale or other disposition, or from the mortgaging or leasing of such trust property, or any part thereof, shall not be responsible for the proper application of such money, or other proceeds, in accordance with the terms of the trust; and any right, title or interest derived from such trustee by such person, in consideration of such payment, shall not be impeached or called in question in consequence of any misapplication by such trustee of such money or proceeds so paid.

En. Sec. 10, Ch. 110, L. 1925.

CHAPTER 42.

QUO WARRANTO.

9576. When proceedings may be instituted.

Complaint in an action of the nature of quo warranto brought by the attorney general in behalf of the state to have a ferry franchise declared forfeited for failure of the ferryman to provide a safe and suitable ferry-boat for the accommodation of travelers, examined and held sufficient to state a cause of action, under this section. State ex rel. Rankin v. Martin, 68 Mont. 392, 219 Pac. 632.

Teacher as an officer whose right may be tested by quo warranto, note, 30 A. L. R. 1423.

For text treatment of this subject see vol. 22 Cal. Jur. 206.

9577. When against a corporation.

Cited as section 6944 in Scott v. Prescott, 69 Mont. 540, 560, 223 Pac. 490.

9578. Who may commence the action.

Cited in Stabler v. Porter, 72 Mont. 62, 68, 232 Pac. 187.

ex rel. Rankin v. Martin, 68 Mont. 392, 396, 219 Pac. 632.

Sections 9578, 9579 were cited in State

9580. When private person may commence action.

Cited as section 6947, Revised Codes, in Wilkinson v. LaCombe, 59 Mont. 518, 525, 197 Pac. 836.

9587. Pleadings.

Sections 9587, 9588 were cited in State ex rel. Rankin v. Martin, 68 Mont. 392, 396, 219 Pac. 632.

CHAPTER 44.

PLACE OF TRIAL OF ACTIONS IN JUSTICE COURTS.

9625. Transfer of cases to district court.

Obiter: Since allegations relating to title to or possession of real property are not pertinent to forcible entry and unlawful detainer cases and if pleaded are surplusage, such an action is not subject to certification to the district court

under this section. Lambert v. Helena Adjustment Co., 69 Mont. 510, 222 Pac. 1057.

For text treatment of this subject see vol. 15 Cal. Jur. 468-472.

CHAPTER 45.

MANNER OF COMMENCING ACTIONS IN JUSTICE COURTS.

9628. Defendants may waive summons.

A "general appearance" is made when a party comes into court without limiting the object for which he comes in. Stofels v. Cherry, 67 Mont. 443, 215 Pac. 1098.

For text treatment of this subject see vol. 15 Cal. Jur. 477.

9632. Time for appearance of defendant.

Under this section, the time within which the summons in an action commenced in a justice's court is returnable is fixed at not less than four days; hence where ser-

vice of summons was made less than four days before time for appearance expired, the justice did not acquire jurisdiction over the person of defendant, and a judg-

ment entered upon such service was void.
State v. Justice of Peace Court et al.,
 69 Mont. 450, 222 Pac. 1055.

For text treatment of this subject see
 vol. 15 Cal. Jur. 479.

CHAPTER 46.

PLEADINGS IN JUSTICE COURTS.

9638. Form of pleadings.

Under the rule that the pleadings in a justice court as well as the statutory requirements with relation thereto must be liberally construed, held that this section, requiring that if a pleading be oral its substance must be entered in the docket, and section 9703, declaring that the justice must enter therein a concise statement of the material parts of all oral pleadings, mean no more than that he shall enter such a recital thereof as would advise a person of common understanding of the nature of the pleadings. *Malano v. Bressan*, 76 Mont. 366, 245 Pac. 871.

Technical rules of pleading should not be applied in a justice's court, and a com-

plaint filed therein must be construed with great liberality. *Lambert v. Helena Adjustment Co.*, 69 Mont. 510, 222 Pac. 1057.

On appeal from justice court to the district court, the sufficiency of the complaint must be tested by the rules applicable to the former and construed with great liberality. *Woody v. Security State Bank et al.*, 67 Mont. 109, 214 Pac. 1096.

Cited in *State ex rel. Kennedy v. Hubbard*, 77 Mont. 170, 173, 253 Pac. 271.

For text treatment of this subject see
 vol. 15 Cal. Jur. 483.

9641. When demurrer to complaint may be put in.

Cited in *State ex rel. Kennedy v. Hubbard*, 77 Mont. 170, 173, 253 Pac. 271;

Stoffels v. Cherry, 67 Mont. 443, 445, 215 Pac. 1098.

9642. Answer.

Cited in *Malano v. Bressan*, 76 Mont. 366, 370, 245 Pac. 871.

CHAPTER 48.

JUDGMENTS BY DEFAULT.

9664. Judgment when defendant fails to appear.

Failure of the justice of the peace to wait the statutory time of one hour for appearance of the defendant before rendition of judgment amounted to a mere irregularity rendering the judgment voidable and not void and therefore not

subject to collateral attack. *Billings Hardware Co. v. Bryan*, 63 Mont. 14, 206 Pac. 418.

For text treatment of this subject see
 vol. 15 Cal. Jur. 496.

CHAPTER 50.

JUDGMENTS (OTHER THAN DEFAULT) IN JUSTICE COURTS.

9680. Judgment of dismissal entered in certain cases without prejudice.

Cited in *Stoffels v. Cherry*, 67 Mont. 443, 446, 215 Pac. 1098.

9687. Offer to compromise before trial.

Cited in *State ex rel. Kennedy v. Hubbard*, 77 Mont. 170, 172, 253 Pac. 271.

CHAPTER 53.

DOCKET OF JUSTICES.

9703. Docket—What to contain.

A general denial has no "parts" within the meaning of this section, providing that if a pleading in the justice court be oral an entry shall be made in the docket containing a concise statement of the "material parts," hence an entry that

defendant interposed an oral general denial is sufficient. *Malano v. Bressan*, 76 Mont. 366, 245 Pac. 871.

For text treatment of this subject see vol. 15 Cal. Jur. 489.

CHAPTER 54.

GENERAL PROVISIONS RELATING TO JUSTICE COURTS.

9712. Blanks must be filled in all papers issued by a justice, except subpoenas.

One who knowingly uses a summons, writ of attachment or similar process purported to have issued from a justice of the peace court but which is void under this section, because not completely filled out by the justice, and enforces collection by means of it, is guilty of extortion. *In re Frederick*, 71 Mont. 205, 227 Pac. 999.

An attorney who, in violation of this section, in the enforcement of money claims made use of summonses and writs of attachment furnished him by a justice of the peace signed by the latter

but the blanks in which were not filled out but were filled out by the attorney, though guilty of professional misconduct, held, sufficiently punished by suspension from office for a period of thirty days, in view of his youth and alleged ignorance of the fact that the practice was culpable, his previous irreproachable conduct and reputation, and his frankness in acknowledging his fault. *In re Frederick*, 71 Mont. 205, 227 Pac. 999.

For text treatment of this subject see vol. 15 Cal. Jur. 480.

CHAPTER 55.

PROCEEDINGS IN CIVIL ACTIONS IN POLICE COURTS.

9725. How commenced.

This and the following three sections were cited as sections 7092-7095, Revised Codes, in *City of Miles City v. Drum*, 60 Mont. 451, 452, 199 Pac. 719.

For text treatment of this subject see vol. 15 Cal. Jur. 552.

CHAPTER 56.

APPEALS TO SUPREME COURT.

9729. How judgments and orders may be reviewed.

Sections 9729-9731 were cited in *Hoppin v. Long*, 74 Mont. 558, 578, 241 Pac. 636.

9730. Party aggrieved may appeal—Names of parties.

Unless a party has an interest in the subject of litigation which is injuriously affected by an order made or judgment rendered therein, he is not an "aggrieved party," within the meaning of this section, and cannot appeal therefrom. *Griffith v. Montana Wheat Growers' Assn.*, 75 Mont. 466, 244 Pac. 277.

An appeal does not lie from an order denying a motion for leave to file a complaint in intervention. *State ex rel. Red Lodge Irr. Dist. v. District Court et al.*, 75 Mont. 132, 242 Pac. 431.

State or public official as "party aggrieved" by discharge in habeas corpus, notes, 10 A. L. R. 396; 30 A. L. R. 1323.

Attorney's right to prosecute an appeal to protect his contingent fee notwithstanding desire of client to dismiss appeal or to substitute attorneys, note, 16 A. L. R. 1162.

For text treatment of this subject see vol. 2 Cal. Jur. 208, 231.

9731. From what judgment or order an appeal may be taken.

A proceeding in habeas corpus, the object of which is to determine the right to the custody of a minor, is a special proceeding of a civil nature to enforce private rights; the disposition made of it by the court is a judgment from which an appeal may be taken under this section. *In re Thompson*, 77 Mont. 466, 251 Pac. 163.

Under subdivision 3 of this section, authorizing an appeal from a judgment or order made by the district court sitting in probate "against . . . directing . . . the sale or conveyance of real property," an appeal lies from an order refusing to confirm an administrator's sale of such property. *In re McLure's Estate*, 76 Mont. 476, 248 Pac. 362.

Under this section, subdivision 3, only such orders in probate proceedings as therein enumerated are appealable; hence an order dismissing a petition for the revocation of the probate of a will—in effect an order refusing to revoke its probate—not being included in the enumeration, is not appealable. *In re Ferguson's Estate*, 73 Mont. 596, 237 Pac. 1105.

An order permitting amendment of an affidavit for writ of attachment is not appealable. *Hetrick v. Renwald*, 73 Mont. 426, 236 Pac. 1089.

To render a special order made after final judgment appealable under this section, it must be one affecting rights incorporated in the judgment. *Apple v. Seaver*, 70 Mont. 65, 223 Pac. 830.

An order denying defendant's motion for leave to amend his answer after judgment had been rendered and motion for new trial denied was not a special order made after final judgment within the meaning of this section, and was therefore not appealable. *Apple v. Seaver*, 70 Mont. 65, 223 Pac. 830.

Under the rule that certiorari does not lie where appeal is available, held that an order so modifying a decree of divorce as to suspend payment of alimony and awarding the custody of a minor child to the father upon remarriage of the mother was a special order made after final judgment and appealable under this section, and that therefore the writ of review was not available to review the correctness of the order. *State ex rel. Gates v. District Court*, 69 Mont. 322, 221 Pac. 543.

The statute permitting an appeal from a final judgment contemplates an appeal from the whole thereof, and therefore an appeal from only a portion of it does not lie. *Lohman v. Poor et al.*, 68 Mont. 579, 220 Pac. 1094.

In an action for a partnership accounting in which defendants, among other

things, claimed that plaintiff had purchased certain lands with partnership funds, the judgment, which determined all the material issues involved, a referee being appointed to take an account of the partnership affairs to report the facts, and which left nothing undetermined except the title to a homestead patented to plaintiff also claimed as partnership property, was final in the sense used in this section, authorizing an appeal from a "final judgment." *Wilson v. Wilson et al.*, 64 Mont. 533, 210 Pac. 896.

An appeal from an order denying a motion for leave to file a complaint in intervention does not lie, this section not authorizing it. *Equity Co-operative Assn. v. Milling Co.*, 63 Mont. 26, 206 Pac. 349.

Under this section, an appeal lies from the final, or formal, judgment granting (or denying) a peremptory writ of prohibition, but does not lie from an order entered in the minutes of the district court directing the peremptory writ to issue. *State ex rel. Lalonde v. Lemkie*, 62 Mont. 51, 202 Pac. 1109.

Appeals do not lie under this section from orders rejecting findings of the jury, from conclusions of law, or from the action of the court in adopting certain findings of the jury and making findings of its own, the questions thus sought to be raised being reviewable on appeal from the judgment. *Bode v. Rollwitz et al.*, 60 Mont. 481, 199 Pac. 688.

An order made after judgment denying a motion to set aside a default and judgment is appealable under this section; hence when no appeal was taken, the alleged error in refusing the motion was not reviewable on appeal from the judgment. (On rehearing.) *Batchoff v. Butte Pacific Copper Co.*, 60 Mont. 179, 198 Pac. 132.

Since denial of a motion to set aside the findings and judgment in an action in ejectment was a special order made after final judgment, it was appealable, and failure to appeal therefrom bars review on appeal from the judgment. *Stack v. Coyle*, 59 Mont. 444, 197 Pac. 747.

A "claim" against the estate of a deceased person, within the meaning of this section, means any pecuniary demand against the estate, and therefore comprises an inheritance tax. *In re Sattes' Estate*, 59 Mont. 220, 195 Pac. 1033.

Cited in *State ex rel. Thompson v. District Court*, 75 Mont. 147, 153, 242 Pac. 959; *State ex rel. Altop v. District Court*, 72 Mont. 49, 55, 231 Pac. 99; *State ex rel. Rankin v. District Court*, 70 Mont. 322, 325, 225 Pac. 804; as section 7098, Revised Codes, in *State v. District Court et al.*, 62 Mont. 60, 67, 203 Pac. 860; *State ex rel. Peel v. District Court*, 59 Mont. 505, 515, 197 Pac. 741.

Discharge on habeas corpus as "final judgment," note, 30 A. L. R. 1324.

For text treatment of this subject see vol. 2 Cal. Jur. 129 et seq.

9732. When appeal may be taken. An appeal may be taken:

1. From a final judgment in an action or special proceeding commenced in the court in which the same is rendered within six months after the entry of such judgment.

2. From a judgment rendered, on an appeal from an inferior court, within ninety days after the entry of such judgment.

3. From an order granting a new trial; from an order granting, dissolving, or modifying an injunction; from an order refusing to grant, dissolve, or modify an injunction; from an order dissolving or refusing to dissolve or modify an attachment; from an order changing or refusing to change a place of trial; from an order appointing or refusing to appoint a receiver, or giving directions with respect to a receivership, or refusing to vacate an order appointing or affecting a receiver; from an order directing the delivery, transfer, or surrender of property; from any special order made after final judgment; from an interlocutory judgment or order in actions for partition of real property, and from an order confirming, changing, ratifying, or setting aside the report in whole or in part of the referees in actions for partition of real property, within sixty days after the order or interlocutory judgment is made and entered in the minutes of the court filed with the clerk. In any of the cases mentioned in this subdivision the supreme court, or a judge thereof, may stay all proceedings under the order appealed from on such conditions as may seem proper.

4. From the judgment or orders mentioned in subdivision 3 of the next preceding section, within sixty days after the judgment or order is made or entered, or filed with the clerk.

Amd. Sec. 1, Ch. 39, L. 1925.

The writ of mandate is available only in those rare cases where there is not any other plain, speedy and adequate remedy, hence does not lie to review an order granting or refusing to grant a change of venue, such order having been made appealable by this section as amended. *State ex rel. Malone v. District Court*, 74 Mont. 488, 241 Pac. 240.

Under this section, an appeal from a final judgment must be taken within six months after entry; where not taken until after the expiration of that time it will be dismissed. *Hodson et al. v. O'Keeffe*, 71 Mont. 322, 229 Pac. 722.

Cited in *Hoppin v. Long*, 74 Mont. 558, 570, 241 Pac. 636; *Atkinson v. Bonners Ferry Lumber Co.*, 74 Mont. 393, 396, 240 Pac. 823; *Hale et al. v. Belgrade Co. et al.*, 74 Mont. 308, 313, 240 Pac. 371; *State ex rel. School Dist. v. Trumper*, 69 Mont. 468, 478, 222 Pac. 1064; *State ex rel. Deck v. District Court*, 64 Mont. 110, 112, 207 Pac. 1004; as section 7099, Revised Codes, in *State Bank of New Salem v. Schultze*, 63 Mont. 410, 416, 209 Pac. 599; *McCormick et al. v. Shields*, 63 Mont. 9, 13, 205 Pac. 831.

For text treatment of this subject see vol. 2 Cal. Jur. 304, 390.

9733. Appeal—How taken.

Where nonappearing devisees whose interests rather than being injuriously affected by the reversal of an order denying the petition of others to require the executor to make final account and turn over the real property of the estate to the devisees could only be benefited thereby, they were not "adverse" parties within the meaning of this section, providing that notice of appeal must be served upon

"the adverse party or his attorney." In *re McGovern's Estate*, 77 Mont. 182, 250 Pac. 812.

Under sections 9733, 9747, and the rules of the supreme court, relative to taking of appeals, that where nineteen defendants were charged with violations of a city ordinance, and the cases which could not, under section 9820, have been joined, were tried together under a stipulation

of counsel that all the evidence introduced should apply to each case, so far as applicable, and each defendant was found guilty and a separate judgment entered against each, but only one perfected an appeal, his bill of exceptions reciting a stipulation that the proceedings with reference to each in the district court were the same, that the notice of appeal was the same in each case and that all the notices were filed in the lower court on the same day, and asking that the supreme court take jurisdiction of the appeals of the eighteen defendants other than the one who had properly perfected his appeal, that the appellate court did not acquire jurisdiction of any appeal other than the one. *City of Bozeman v. Nelson*, 73 Mont. 147, 237 Pac. 528.

An "adverse party" within the meaning of this section, upon whom the appellant must serve a notice of appeal, is one who has an interest in the object sought to be accomplished by the appeal, and under that section a party to a judgment

whose rights may be injuriously affected by its reversal or modification is entitled to notice. *Great Falls Nat. Bank v. Young et al.*, 67 Mont. 328, 215 Pac. 651.

Where the judgment in an action on a promissory note was joint and several against the maker and an indorser, and the maker asked for and was granted a new trial, and the verdict and judgment were set aside only as to him, his co-defendant will be presumed to have been satisfied with the judgment and incapable of being injuriously affected by the result of the appeal from the new trial order, and hence was not an adverse party entitled to notice of appeal. *Great Falls Nat. Bank v. Young et al.*, 67 Mont. 328, 215 Pac. 651.

Cited as section 7100, Revised Codes, in *State v. District Court et al.*, 61 Mont. 346, 349, 202 Pac. 575.

For text treatment of this subject see vol. 2 Cal. Jur. 311 et seq., 356 et seq.

9734. Undertaking or deposit on appeal.

While a written undertaking on appeal must specify the purpose for which it is given, where money is deposited in lieu of such undertaking no writing is required, the statute declaring the purpose for which it is deposited. In *re McGovern's Estate*, 77 Mont. 182, 250 Pac. 812.

Cited as section 7101, Revised Codes, in *Comeford v. U. S. F. & G. Co.*, 59 Mont. 243, 260, 196 Pac. 984.

For text treatment of this subject see vol. 2 Cal. Jur. 366.

9735. Stay of proceedings—Money judgments.

Cited as section 7102, Revised Codes, in *Comeford v. U. S. F. & G. Co.*, 59 Mont. 243, 253, 260, 196 Pac. 984.

9739. Stay of proceedings—Court may limit security.

Cited in *Hoppin v. Long*, 74 Mont. 558, 571, 241 Pac. 636.

Cited as section 7106, Revised Codes, in

State v. District Court et al., 61 Mont. 346, 349, 202 Pac. 575.

9745. Record on appeal from orders other than new trial.

Under this section, an order denying a new trial is no longer appealable. *Dever v. Girson*, 75 Mont. 412, 243 Pac. 812.

The appeal from an order overruling a motion for a new trial has been abolished by this section, the questions formerly raised on such an appeal being now reviewable on appeal from the judgment. *Schmuck v. Beck*, 72 Mont. 606, 234 Pac. 477.

This section, having abolished an appeal from an order denying a new trial, such an attempted appeal will be dismissed. *Lappin v. Martin et al.*, 71 Mont. 233, 228 Pac. 763.

On appeal from an order to dissolve temporary injunction, the transcript of the testimony, certified by the trial judge

the clerk and the stenographer of the court as correct, but not incorporated in a bill of exceptions, may, under this section, be considered in determining whether there was sufficient evidence to warrant the order. *Atkinson v. Roosevelt County et al.*, 71 Mont. 165, 227 Pac. 811.

The right to appeal from an order denying a new trial was abolished by this section, and therefore an attempted appeal from such an order will be dismissed. *Frost et al. v. Long & Co. et al.*, 71 Mont. 141, 228 Pac. 75.

By this section, the appeal from an order denying a new trial is abolished. *Tripp v. Silver Dyke Mining Co.*, 70 Mont. 120, 224 Pac. 272.

On appeal from a final judgment the

evidence and proceedings had on the trial can only be reviewed if incorporated in a bill of exceptions as provided in section 9390; therefore where there was no such bill and the evidence and proceedings were simply certified by the judge and clerk as provided in this section, on appeal from an order, review thereof cannot be had. In *re Bitter Root Irr. Dist.*, 67 Mont. 436, 218 Pac. 945.

Cited in *Hoppin v. Long*, 74 Mont. 558, 570, 241 Pac. 636; *City of Bozeman v. Nelson*, 73 Mont. 147, 162, 237 Pac. 528;

State v. English, 71 Mont. 343, 350, 229 Pac. 727; *Baroch v. Greater Montana Oil Co.*, 70 Mont. 93, 94, 225 Pac. 800; *Apple v. Seaver*, 70 Mont. 65, 67, 223 Pac. 830; *Outlook F. E. Co. v. American S. Co.*, 70 Mont. 8, 15, 223 Pac. 905; *Vaill v. Northern Pacific Ry. Co.*, 66 Mont. 301, 306, 213 Pac. 446; *Morrow v. Dahl et al.*, 66 Mont. 251, 258, 213 Pac. 602.

For text treatment of this subject see vol. 2 Cal. Jur. 486, 502.

9746. Authentication of copies — Abbreviated record. All papers furnished to the supreme court on appeal shall, before the transcript is filed therein, be certified by the clerk or by the attorneys in the case to be correct, and must be accompanied with a certificate of the clerk or attorneys that an undertaking on appeal, in due form, has been properly filed, or that a deposit has been made as provided for in section 9741, or the stipulation of the party waiving an undertaking or deposit. The appellant may present to the supreme court, or any justice thereof, a copy of the record from which are omitted those parts thereof which appellant believes to be immaterial to any question arising on the appeal, and thereupon, if it shall appear *prima facie*, that the parts omitted are so immaterial, the court or justice shall make an order allowing such abbreviated record to be served and filed as the transcript on appeal, and directing the clerk of the district court to certify to such transcript, which order shall save to the respondent the right to suggest a diminution of the record in case he can show that without the parts omitted the appeal cannot be fairly and fully heard and determined. The certificate of the clerk of the district court shall refer to such order of the court or justice. In all cases where no bill of exceptions is presented for settlement in the trial court the party appealing shall file his transcript in the supreme court within sixty days after such appeal is perfected; and in cases where a bill of exceptions is settled in the trial court the party appealing shall file his transcript in the supreme court within sixty days after such bill of exceptions has been settled.

Amd. Sec. 1, Ch. 19, L. 1925.

So much of section 1 of chapter 19, Laws of 1925, as assumes to amend this section by the addition of a provision declaring within what time transcripts on appeal shall be filed in the supreme court, and repealing by implication section 9732, prescribing the time within which an appeal from a judgment may be taken, is void as in contravention of section 23, article V of the state constitution, in that the title of the chapter does not disclose the purpose of the legislature to effectuate a change in the time within which transcripts must be filed as fixed by subdivision 2 of Rule V of the supreme court rules. *Hale et al. v. Belgrade Co. et al.*, 74 Mont. 308, 240 Pac. 371.

Unless appellant procures an order from the supreme court or a justice thereof, under this section, permitting an abbreviated record to be filed by omitting any part of the judgment-roll, the record on appeal from an order overruling a motion for new trial must contain the complete judgment-roll, and, therefore, the judgment. *Minneapolis T. M. Co. v. Stanford M. Co.*, 59 Mont. 359, 197 Pac. 993.

Cited as section 7115, Revised Codes, in *Easton v. Western Life & Casualty Co.*, 59 Mont. 434, 435, 197 Pac. 252.

For text treatment of this subject see vol. 2 Cal. Jur. 504, 597-606.

9747. When an appeal may be dismissed.

Under this section, providing that all objections to the record on appeal shall be deemed waived unless a motion to dismiss is made, an assignment of error that the trial judge settled the stenographer's transcript after he went out of office will not be entertained where the hearing on appeal was had by both parties on the theory that the transcript was correct, and where no motion to dismiss had been made. *Sevanin v. Chicago etc. Ry. Co.*, 62 Mont. 546, 205 Pac. 825.

Applied with section 9733 in *City of Bozeman v. Nelson*, 73 Mont. 147, 237 Pac. 528.

Cited in *Atkinson v. Roosevelt County et al.*, 71 Mont. 165, 227 Pac. 811.

For text treatment of this subject see vol. 2 Cal. Jur. 367-375, 385-391, 589, 761, 775, 776.

9748. Effect of dismissal.

Cited in *Great Northern Ry. Co. v. Galbreath Cattle Co.*, 271 U. S. 99, 100, 70 L. Ed. 854, 46 Sup. Ct. Rep. 439.

9750. What the court may review on an appeal from a judgment.

Cited in *O'Donnell v. City of Butte*, 72 Mont. 449, 454, 235 Pac. 707; *Blessing*

v. Angell et al., 66 Mont. 482, 483, 214 Pac. 71.

9751. Ruling against respondent may be reviewed.

Under this section, authorizing review of cross-assignments of error made by the successful party, the supreme court will affirm the judgment if error committed against the appellant is compensated by that committed against respondent. *Hale et al. v. Belgrade Co., Ltd.*, 75 Mont. 99, 242 Pac. 425.

The right to make cross-assignments of error is purely statutory, and in the absence of compliance with the requirements of the statute, they cannot be considered on appeal. *Cook v. MacGinniss*, 72 Mont. 280, 233 Pac. 129.

Where respondent desires a review of rulings of the trial court upon a cause of action separate and distinct from that which the appellant seeks to have reviewed on his appeal, he must prosecute a cross-appeal, even though the causes were tried in the same action, this section, authorizing review of cross-assignments of error not being intended to do away with the necessity of a cross-appeal under such conditions. *Cook v. MacGinniss*, 72 Mont. 280, 233 Pac. 129.

This section, authorizing review of cross-assignments of error on appeal, has

application only to cases in which the respondent makes cross-assignments upon errors in rulings adverse to him and preserved in a bill of exceptions, its purpose being to enable the supreme court to determine whether those complained of by the appellant were compensated or rendered harmless by reason of those complained of by respondent. *Cook v. MacGinniss*, 72 Mont. 280, 233 Pac. 129.

To make an order or ruling of the trial court against the respondent reviewable by the supreme court under a cross-assignment of error, the order of ruling must be presented by bill of exceptions or statement of the case properly settled; hence where the record on appeal consisted of the judgment-roll only the alleged error was not reviewable. *Thompson v. Twodot Fertilizer Co. et al.*, 71 Mont. 486, 230 Pac. 588.

Cited in *Alley v. Butte & Western Mining Co.*, 77 Mont. 477, 497, 251 Pac. 517; *McDaniel v. Hager-Stevenson Oil Co.*, 75 Mont. 356, 359, 243 Pac. 582; *Wallace et al. v. Goldberg et al.*, 72 Mont. 234, 242, 231 Pac. 56; *State ex rel. Rankin v. Martin*, 68 Mont. 392, 403, 219 Pac. 632.

9753. Remittitur must be certified to the clerk.

Cited in *State ex rel. U. S. Fidelity & Guaranty Co. v. District Court*, 77 Mont. 594, 603, 251 Pac. 1061.

CHAPTER 57.**APPEALS TO DISTRICT COURT.****9754. Appeal from judgment of justice's or police court.**

Under this section, an appeal from a justice of the peace court to the district court is perfected by service of the notice of appeal upon the adverse party or his

attorney and the filing thereof with the justice, proof of service not being made a jurisdictional requirement; therefore dismissal of such an appeal because the record did not show that service had been made upon the adverse party was error.

9755. Must be tried anew.

There is no distinction in principle between the provisions of this section and of section 9187. In either instance the application to amend is addressed to the sound legal discretion of the court

Farmers & Miners' State Bank v. Probst, 76 Mont. 284, 246 Pac. 249.

For text treatment of this subject see vol. 15 Cal. Jur. 514-520.

9757. Undertaking on appeal.

In an action to recover on an undertaking on appeal from a justice's court to the district court, by which the sureties contracted that the appellant would pay the amount of the judgment appealed from if the appeal should be withdrawn or dismissed, followed by the words "in the amount of any judgment," etc., that might be recovered in the district court, held that the word "in" being meaningless in the connection in which used, must be read "or"—the word employed in this

and the amendment should be allowed in furtherance of justice and not where the applicant has been guilty of indifference or neglect. Barrett v. Shipley, 63 Mont. 152, 206 Pac. 430.

section prescribing the form of the undertaking—and that the contention of the sureties that by the use of the word "in" they were relieved from liability for the amount of the judgment obtained in the district court is without merit. Kasun v. Todevich, 71 Mont. 315, 229 Pac. 714.

For text treatment of this subject see vol. 15 Cal. Jur. 522.

CHAPTER 59.

OFFER OF DEFENDANT TO COMPROMISE.

9770. Proceedings on offer of the defendant to compromise after suit brought.

Under this section which, not being inconsistent with federal laws, governs in the federal courts in Montana, where a plaintiff recovers judgment for a sum less than that for which defendant offered to allow judgment, defendant is entitled

to recover costs. Morris-Turner Livestock Co. v. Director-General of Railroads, 266 Fed. 600.

For text treatment of this subject see vol. 5 Cal. Jur. 407.

CHAPTER 61.

MOTIONS AND ORDERS.

9772. Order and motion defined.

A motion is but an application for an order, is not a pleading, does not require an answer and is not subject to the general rules which regulate pleadings; if it fairly apprises the court of the grounds upon which relief is sought it is sufficient. Hall v. Hall, 70 Mont. 460, 226 Pac. 469.

Cited in O'Hanion v. Great Northern Ry. Co., 76 Mont. 128, 136, 245 Pac. 518; State ex rel. Davis v. District Court et al., 72 Mont. 56, 60, 231 Pac. 395.

For text treatment of this subject see vol. 14 Cal. Jur. 854; vol. 18 Cal. Jur. 647, 648.

CHAPTER 62.

NOTICES AND FILING AND SERVICE OF PAPERS.

9778. Notices and papers—How served.

Cited in Miles v. Miles, 76 Mont. 375, 383, 247 Pac. 328; State ex rel. Davis v. District Court et al., 72 Mont. 56, 59, 231 Pac. 395.

9781. Service by mail, how.

The provision of this section that in case of service by mail, where something is to be done by the adverse party within a given number of days after service, the time within which it may be done is extended one day for every twenty-five miles distance between the place of deposit and the place of address, applies in a case where, after overruling of a demurrer to a complaint defendant is

granted a given number of days within which to serve and file answer, or is ordered to do so on or before a certain date, the two meaning substantially the same thing. *Batchoff v. Butte Pacific Copper Co.*, 60 Mont. 179, 198 Pac. 132.

For text treatment of this subject see vol. 2 Cal. Jur. 351, 352, 406; vol. 21 Cal. Jur. 563-565.

9782. Appearance—Notices after appearance.

When defendant in a foreclosure proceeding has appeared and is in possession of the premises he is entitled to notice of application for writ of assistance by the purchaser at the foreclosure sale; but where he defaults, he is not entitled to such notice under this section, which provides that after default service of notice of subsequent proceedings need not be made upon him. *State ex rel. Flowerree v. District Court*, 71 Mont. 89, 227 Pac. 579.

A party who permits himself to get

into default after general appearance is as effectively out of court as respects his right to notice of subsequent proceedings, as though he had failed to enter appearance in the first instance. Above rule applied to the facts appearing in *Marlowe v. Missoula Gas Co. et al.*, 68 Mont. 372, 219 Pac. 1111.

For text treatment of this subject see vol. 3 Cal. Jur. 8, 469; vol. 21 Cal. Jur. 557.

CHAPTER 63.**COSTS AND DISBURSEMENTS.****9786. Compensation of attorneys—Costs to parties.**

While under this section and section 8993 an attorney may contract freely with his client as to his compensation before the fiduciary relation commences, as respects such a contract made after the relation had begun, he has the burden of showing that it was fair and reasonable and entered into freely by the client and that the latter knew and understood its provisions. In the absence of such allegations a complaint is insufficient. *Coleman v. Sisson*, 71 Mont. 435, 230 Pac. 582.

Under this section, providing that in probate proceedings the court may fix and allow the compensation of attorneys representing executors and administrators, the jurisdiction of the court was enlarged to the extent of empowering it to determine and fix the amount due an attorney for services rendered an administrator and order that the amount so fixed be set apart out of the funds of the estate for

his use, the effect of the amendment being to constitute the attorney a "person interested in the estate" and to make his claim for reasonable compensation a legal debt against the estate to be paid as a part of the necessary expenses of administration. In *re McLure's Estate*, 68 Mont. 556, 220 Pac. 527.

This section, authorizing the district court sitting in probate to fix and allow the compensation of attorneys representing executors, administrators, etc., is not unconstitutional, as denying a jury trial. In *re McLure's Estate*, 68 Mont. 556, 220 Pac. 527.

Cited in *In re Jennings' Estate*, 74 Mont. 468, 475, 241 Pac. 655; In *re Connolly's Estate*, 73 Mont. 35, 41, 235 Pac. 408.

For text treatment of this subject see vol. 3 Cal. Jur. 679, 683.

9787. When allowed, of course, to the plaintiff.

In an action to recover damages for trespass committed by defendant in pasturing his sheep upon plaintiff's land, plaintiff was entitled to recover his costs irrespective of the amount of the verdict in his favor, under subdivision 1 of this section. *Kiehl v. Holliday*, 77 Mont. 451, 251 Pac. 527.

The recovery of costs, as such, is regulated by statute, and the method therein pointed out must be followed in order to claim them; hence where plaintiff had judgment but failed to file his memorandum and serve a copy thereof on his opponent within five days after the decision of the court was made, as required

by this section, he was not entitled to them. *First State Bank v. Larsen*, 72 Mont. 400, 233 Pac. 960.

Sections 9787, 9788 were cited in *Brunnabend v. Tibbles*, 76 Mont. 288, 300, 296 Pac. 536; *Helena Adjustment Co. v. Clafin*, 75 Mont. 317, 326, 243 Pac. 1063; *State v. Rouleau et al.*, 68 Mont. 529, 543, 219 Pac. 1096; *Jones et al. v. Great Northern Ry. Co.*, 68 Mont. 231, 242,

37 A. L. R. 754, 217 Pac. 673; *State ex rel. Shea v. Cocking et al.*, 66 Mont. 169, 179, 28 A. L. R. 772, 213 Pac. 594.

Joint tort-feasor's liability for costs as affected by satisfaction of judgment by other tort-feasor, note, 27 A. L. R. 819.

For text treatment of this subject see vol. 7 Cal. Jur. 256 et seq., 326.

9788. Defendant's costs must be allowed, of course, in certain cases.

In the absence of statutory authorization therefor, costs may not be apportioned between plaintiff and defendant where the former had judgment on one of his causes of action and the latter had judgment on the other, this section, allowing defendant costs applying only to an action wherein he recovers judgment and plaintiff is altogether unsuccessful. *Jones et al. v. Great Northern*

Ry. Co., 68 Mont. 231, 37 A. L. R. 754, 217 Pac. 673.

Cited in *State v. Rouleau et al.*, 68 Mont. 529, 543, 219 Pac. 1096; *Austby v. Yellowstone Valley Mortgage Co.*, 63 Mont. 444, 450, 207 Pac. 631.

For text treatment of this subject see vol. 7 Cal. Jur. 257 et seq.

9789. Costs—When in the discretion of the court.

Under this section, a successful litigant may recover all costs from his adversary, whether incurred in one or more trials of the cause; therefore, where plaintiff, though successful on the first trial secured a retrial on the ground of inadequacy of the verdict and had judgment, the court properly awarded him costs incident to both trials. *Brunnabend v. Tibbles*, 76 Mont. 288, 246 Pac. 536.

This section, though not in terms authorizing the district court to impose

terms as a condition to the granting of a new trial, held sufficiently broad to vest that court with such discretionary power. *Brunnabend v. Tibbles*, 76 Mont. 288, 246 Pac. 536.

Cited in *Jones et al. v. Great Northern Ry. Co.*, 68 Mont. 231, 242, 37 A. L. R. 754, 217 Pac. 673.

For text treatment of this subject see vol. 7 Cal. Jur. 260 et seq.

9790. When the several defendants are not united in interest, costs may be severed.

Cited in *Jones et al. v. Great Northern Ry. Co.*, 68 Mont. 231, 242, 37 A. L. R. 754, 217 Pac. 673.

9791. Costs of appeal discretionary with the court in certain cases, and when.

Cited in *First State Bank v. Larsen*, 72 Mont. 400, 406, 233 Pac. 960.

9794. Costs when a tender is made before suit brought.

Where defendant, in an action for services rendered, alleged in his answer that before commencement of suit he had tendered to plaintiff the amount to which he was entitled and the jury awarded to plaintiff the amount so tendered, but defendant had failed to deposit in court the sum tendered as required by this section, the latter was not, and plaintiff

was, entitled to costs. *Lewis v. Pennoek*, 68 Mont. 448, 219 Pac. 631.

Cited as section 7161, Revised Codes, in *Harrington et al. v. Moore Land Co.*, 59 Mont. 421, 423, 196 Pac. 975.

For text treatment of this subject see vol. 7 Cal. Jur. 267.

9798. Counsel fees on foreclosure of mortgage.

Under this section, the district court must allow a reasonable attorney's fee in a foreclosure action, and with its deter-

mination in that respect the parties have nothing to do; hence allegations in the pleadings with reference thereto present

no issues of fact and are surplusage. *Bohan v. Harris et al.*, 71 Mont. 495, 230 Pac. 586.

Cited in *Gardiner v. Eclipse Grocery Co.*, 72 Mont. 540, 551, 234 Pac. 490.

9799. What costs allowed on foreclosure of liens. In an action to foreclose any of the liens provided for by sections 8318 to 8350 of the Civil Code the court must allow as costs the money paid for filing and recording the lien, and a reasonable attorney's fee in the district and supreme courts, and such costs and attorney's fees must be allowed to each claimant whose lien is established and such reasonable attorney's fees must be allowed to the defendant against whose property a lien is claimed, if such lien be not established.

Amd. Sec. 1, Ch. 69, L. 1925.

9799.1. Filing fees and attorney's fees on foreclosure of threshermen's liens. In an action to foreclose a thresherman's lien upon grain or crops as provided in sections 8366 to 8374 of the Civil Code, the court must allow as costs the money paid for filing and recording the lien, and a reasonable attorney's fee in the district and supreme courts, and such costs and attorney's fee must be allowed to each claimant whose lien is established, and such reasonable attorney's fee must be allowed to the defendant against whose property a lien is claimed if such claim be not established.

En. Sec. 1, Ch. 27, L. 1923.

9802. What are costs and disbursements.

Cited in *Helena Adjustment Co. v. Clafin*, 75 Mont. 317, 326, 243 Pac. 1063;

Gardiner v. Eclipse Grocery Co., 72 Mont. 540, 550, 234 Pac. 490.

9803. Bill of costs.

Where counsel for the successful party on the day judgment was rendered had knowledge thereof but did not file his memorandum of costs until seven days thereafter, the trial court erred in refusing to strike it from the files, the provision of this section that the memorandum shall be filed with the clerk within five days after "notice" of the decision meaning after knowledge thereof and not after service of formal notice. *Miles v. Miles*, 76 Mont. 375, 247 Pac. 328.

An order denying a party costs is in effect an order taxing costs and not appealable, the ruling of the court being reviewable on appeal from the judgment.

Jones et al. v. Great Northern Ry. Co., 68 Mont. 231, 37 A. L. R. 754, 217 Pac. 673.

Where costs were allowed plaintiff without service on defendant of the memorandum required by this section, error in this regard cannot be reviewed in the absence of a bill of exceptions preserving the proceedings. *McAboy v. Junk*, 68 Mont. 198, 216 Pac. 1111.

Cited in *Hoppin v. Long*, 74 Mont. 558, 572, 241 Pac. 636; *First State Bank v. Larsen*, 72 Mont. 400, 233 Pac. 960.

For text treatment of this subject see vol. 7 Cal. Jur. 291-296.

9804. No cost bill in justice's court.

Cited in *Helena Adjustment Co. v. Clafin*, 75 Mont. 317, 326, 243 Pac. 1063.

9805. Costs on appeal—How claimed.

The successful party is entitled to his costs on appeal, whether or not a formal order is made by the supreme court, if he files a memorandum of his costs with the clerk of the district court within

thirty days after the remittitur is filed with that officer. Failure to do so deprives him of the right to have them included in the judgment in his favor on

a subsequent trial. *First State Bank v. Larsen*, 72 Mont. 400, 233 Pac. 960.

Cited in *State ex rel. Coffey v. District Court*, 74 Mont. 355, 358, 240 Pac. 667.

For text treatment of this subject see vol. 7 Cal. Jur. 303, 317.

9807. Security from nonresident plaintiff.

The provision of this statute that on defendant's motion a nonresident plaintiff may be required to give security for costs confers a personal privilege upon the former which may be waived, and was waived by defendant's failure to make the motion until after the cause had been remanded by the supreme court for a new trial. *State ex rel. Chilcott*

v. District Court, 68 Mont. 57, 216 Pac. 790.

Cited in *Middle States Oil Corp. v. Tanner-Jones Co.*, 73 Mont. 180, 182, 235 Pac. 770.

For text treatment of this subject see vol. 7 Cal. Jur. 227, 272.

9808. If security not given, action dismissed.

Cited in *State ex rel. Chilcott v. District Court*, 68 Mont. 57, 59, 216 Pac. 790.

9809. Poor persons may sue without costs.

Cited in *State ex rel. Chilcott v. District Court*, 68 Mont. 57, 59, 216 Pac. 790.

9810. State, etc., need not pay in advance. The state or a county or a municipality, or any subdivision thereof, or any officer when prosecuting or defending an action on behalf of the state or county, or a municipality, or subdivision thereof, is not required to pay or deposit any fee or amount to or with any officer during the prosecution or defense of an action. No officer so prosecuting or defending shall be taxed with costs or damages, but such costs or damages, if any, shall be taxed to the state or county, or municipality, as the case may be.

Amd. Sec. 1, Ch. 9, L. 1925.

Cited in *State v. Rouleau et al.*, 68 Mont. 529, 544, 219 Pac. 1096; *State ex*

rel. Shea v. Cocking et al., 66 Mont. 169, 178, 213 Pac. 594.

9814. Costs when state a party.

Cited in *State v. Rouleau et al.*, 68 Mont. 529, 544, 219 Pac. 1096.

CHAPTER 64.

GENERAL PROVISIONS.

9820. Consolidation of several actions into one.

Cited in *City of Bozeman v. Nelson*, 73 Mont. 147, 162, 237 Pac. 528.

9821. Actions—When deemed pending.

Since under this section, an action is deemed pending until final determination on appeal or until the time for appealing has expired, it was error to admit in evidence a judgment-roll in a companion case which was then pending on appeal, but nonprejudicial where, independent of the judgment-roll, the proof was sufficient to show that defendant sheriff's attempted justification in seizing personal property under a mortgage was without

merit. *Noe v. Matlock et al.*, 64 Mont. 35, 208 Pac. 591.

Under this section, providing that an action is deemed pending from its commencement until its final determination on appeal, or until the time for appeal has passed, unless the judgment is sooner satisfied, the court erred in striking the defense of another action pending between the same parties upon the same cause, where defendant alleged that the

judgment in that action in his favor had not been satisfied, and it appearing from the record that the time for appealing had not passed. *McCormick et al. v. Shields*, 63 Mont. 9, 205 Pac. 831.

Cited in *State ex rel. McKennan v.*

District Court, 69 Mont. 340, 346, 222 Pac. 426.

For text treatment of this subject see vol. 1 Cal. Jur. 24, 25, 380; vol. 2 Cal. Jur. 227.

9823. Extension of time.

Under this section, the district court may grant a party additional time within which to offer additional amendments to a proposed bill of exceptions. *Morehouse v. Northern Land Co.*, 68 Mont. 96, 216 Pac. 792.

For text treatment of this subject see vol. 2 Cal. Jur. 381, 559-561; vol. 7 Cal. Jur. 275, 293; vol. 21 Cal. Jur. 230, 572-574; vol. 24 Cal. Jur. 587.

9829. State not required to give bonds when state is a party.

Under this section, a county treasurer is not required to furnish an undertaking on attachment in an action brought in his official capacity for the benefit of the county, to recover on an indemnity bond against loss of county funds in a bank. *Jenkins v. First Nat. Bank et al.*, 73 Mont. 110, 236 Pac. 1085.

For text treatment of this subject see vol. 2 Cal. Jur. 365; vol. 3 Cal. Jur. 450; vol. 4 Cal. Jur. 299; vol. 14 Cal. Jur. 253; vol. 18 Cal. Jur. 1122; vol. 21 Cal. Jur. 916; vol. 23 Cal. Jur. 586.

9831. Deposit instead of undertaking.

Cited in *Kirschbaum v. Mayn*, 76 Mont. 320, 329, 48 A. L. B. 1425, 246 Pac. 953.

PART IV.

Special Proceedings of a Civil Nature.

CHAPTER 1.

PRELIMINARY PROVISIONS.

9835. Judgment and order same meaning as in civil actions.

Under this section, providing that the final determination of the rights of a party to a special proceeding is a judgment, an order of the district court directing the exclusion of the lands of a protestant from a proposed extension of an irrigation district is a final judgment. In re

Bitter Root Irr. Dist., 67 Mont. 436, 218 Pac. 945.

For text treatment of this subject see vol. 14 Cal. Jur. 852; vol. 18 Cal. Jur. 648.

CHAPTER 2.

WRIT OF REVIEW.

9837. When and by what courts granted.

Since an order of adoption is not appealable and the writ of habeas corpus is inadequate for the purpose of setting aside such an order made without jurisdiction, the writ of certiorari is the proper remedy. *State ex rel. Thompson v. District Court*, 75 Mont. 147, 242 Pac. 959.

The writ of certiorari issues only where

there is an excess of jurisdiction on the part of the inferior tribunal, absence of the right to appeal from the act done without jurisdiction, and lack of a plain, speedy and adequate remedy other than certiorari. *State ex rel. Mahood v. Board of R. R. Commrs.*, 73 Mont. 1, 234 Pac. 834.

An order vacating an order setting

aside a default judgment is a special order made after final judgment, and as such is appealable, and therefore the writ of certiorari does not lie to review it. *State ex rel. Deck v. District Court et al.*, 64 Mont. 110, 207 Pac. 1004.

Cited in *State v. Board of Railroad Comms.*, 73 Mont. 1, 4, 234 Pac. 834;

State ex rel. Gates v. District Court, 69 Mont. 322, 324, 221 Pac. 543.

Certiorari to review order adjudging one in contempt for violation of injunction, note, 28 A. L. R. 65.

For text treatment of this subject see vol. 4 Cal. Jur. 1019 et seq.

9839. The writ to be directed to the inferior tribunal, etc.

To warrant relief under the writ of certiorari, the record of the proceeding sought to be reviewed must be certified to the reviewing court by the clerk of the lower court; hence where in response to an order to show cause on application for the writ of supervisory control, or other proper writ, the district judge made return, and the supervisory writ

did not lie, the writ of review could not issue under the prayer for some other proper writ. *State ex rel. U. S. Fidelity & Guaranty Co. v. District Court*, 77 Mont. 214, 250 Pac. 609.

For text treatment of this subject see vol. 4 Cal. Jur. 1096.

9844. A defective return of the writ may be perfected—Hearing and judgment.

Where defendant in a proceeding for a writ of certiorari after return made filed a motion for judgment on the pleadings, which motion was argued by the parties and submitted for decision, and the court instead of rendering judgment as required by this section, made an order, nonappealable in character, dismiss-

ing the proceeding, the writ of mandate compelling it to render judgment is the proper remedy. *State ex rel. Altrop v. District Court*, 72 Mont. 49, 231 Pac. 99.

For text treatment of this subject see vol. 4 Cal. Jur. 1102-1105, 1114.

9846. Judgment-roll.

On appeal from a judgment of the district court on certiorari annulling a default judgment rendered by a justice's court, the record consists of the judgment-roll which embraces "a copy of the judgment, signed by the clerk, entered upon or attached to the writ and return," and therefore the affidavit upon which the

writ was issued, the sufficiency of which was not attacked in the trial court, was not properly a part of the record. *State v. Justice of the Peace Court et al.*, 69 Mont. 450, 222 Pac. 1055.

For text treatment of this subject see vol. 4 Cal. Jur. 1117.

CHAPTER 3.

WRIT OF MANDATE.

9847. Mandate defined.

Sections 9847-9860 were cited in *State ex rel. Carroll v. District Court*, 69 Mont. 415, 421, 222 Pac. 444; as sections 7213-

7230, Revised Codes; in *State ex rel. Lalonde v. Lemkie*, 62 Mont. 51, 52, 202 Pac. 1109.

9848. When and by what court issued.

Under this section, the writ of mandate issues only to compel the performance of an act which the law specially enjoins as a duty resting with the respondent; hence, it does not lie to compel the state board of equalization to compel it to consent to the transfer of shares of stock on the books of a foreign corporation doing business in the state and to return to relator an inheritance tax paid under protest by the executor of the nonresi-

dent decedent, owner of the stock, the law not making it the specific duty of the board to do so. *State ex rel. Bankers' Trust Co. v. Walker*, 70 Mont. 484, 226 Pac. 894.

The district court of one district or county has jurisdiction to issue a writ of mandate directed to an officer of another district or county to compel him to perform a ministerial act which the law specially enjoins as a duty resulting

from his office. *State ex rel. Carroll v. District Court*, 69 Mont. 415, 222 Pac. 444.

Mandamus does not lie to compel a board of county commissioners to permit the withdrawal of a withdrawal of a name from a petition for the creation of a new county. *State ex rel. Faragher v. Moulton et al.*, 68 Mont. 219, 216 Pac. 804.

Mandamus to compel school trustees of a district of the third class to rescind their action in closing two of the three schools in the district taken on the ground of the unfavorable financial condition of the district and on account of the removal of many families in the vicinity of those closed, does not lie, the matter being addressed to the discretion of the board which cannot be thus controlled. *State ex rel. Robinson v. Desonia et al.*, 67 Mont. 201, 215 Pac. 220.

Mandamus does not lie to compel a board of county commissioners to establish fire limits in an unincorporated town or village in which a voluntary fire department had been previously organized, and to levy a special tax for its maintenance, its authority in that respect being discretionary. *State ex rel. Peninsula Security Co. v. Board of County Commrs.*, 62 Mont. 69, 202 Pac. 1108.

Cited in *State ex rel. U. S. Fidelity & Guaranty Co. v. District Court et al.*, 77 Mont. 594, 605, 251 Pac. 1061; *State ex rel. Altrop v. District Court*, 72 Mont.

49, 231 Pac. 99; as section 7214, Revised Codes, in *State v. Poland et al.*, 61 Mont. 600, 606, 203 Pac. 352; *State ex rel. Peel v. District Court*, 59 Mont. 505, 516, 517, 197 Pac. 741.

Mandamus to enforce performance of public duty by officer who is subject to penalty, fine or imprisonment, note, 19 A. L. R. 1382.

Mandamus to compel performance of duties after resignation of officer, note, 19 A. L. R. 48.

Mandamus to compel institution of proceedings for purpose of removal of public officer, note, 51 A. L. R. 561.

Mandamus to compel court or judge to require witness to testify, note, 41 A. L. R. 436.

Mandamus as remedy for interference with right of way, note, 47 A. L. R. 557.

Mandamus to compel legislature to make apportionment of representatives or election districts, note, 46 A. L. R. 964.

Mandamus against municipality to compel improvement or repair of street or highway, note, 46 A. L. R. 257.

Mandamus to compel enrollment of pupil in state school or university, note, 39 A. L. R. 1019.

Mandamus to enforce stockholder's right to inspect books and records, notes, 22 A. L. R. 43; 43 A. L. R. 786.

For text treatment of this subject see vol. 16 Cal. Jur. 762, 785, 804.

9849. Writ—When and upon what to issue.

The applicant must disclose the facts which establish his clear legal right to relief by writ of mandamus. Where a sheriff wrongfully refused to levy upon and sell property on execution issued on a money judgment, he is liable in damages to the judgment creditor on his official bond and the latter is therefore not entitled to a writ of mandate to compel the officer to proceed under the execution. *State ex rel. Duggan v. District Court*, 65 Mont. 197, 210 Pac. 1062.

Where the alternative writ refers to

the affidavit, the two constitute the first pleading on the part of the applicant for the writ and a motion to quash challenges the sufficiency of both. *State ex rel. Duggan v. District Court*, 65 Mont. 197, 210 Pac. 1062.

Cited in *State ex rel. Malone v. District Court*, 74 Mont. 488, 489, 241 Pac. 240; *State ex rel. Altrop v. District Court*, 72 Mont. 49, 231 Pac. 99.

For text treatment of this subject see vol. 16 Cal. Jur. 784, 819, 851, 855, 859.

9858. If the applicant succeed, he may have damages, costs and a peremptory mandate. If judgment be given for the applicant, he may recover the damages which he has sustained, as found by the jury, or as may be determined by the court or referees, upon a reference to be ordered, together with costs; and for such damages and costs an execution may issue; and a peremptory mandate must also be awarded without delay;

Provided, however, that in all cases where the respondent is a state, county or municipal officer all damages and costs, or either, which may be recovered or awarded shall be recovered and awarded against

the state, county or municipal corporation represented by such officer, and not against such officer so appearing in said proceeding and the same shall be a proper claim against the state or county or municipal corporation for which such officer shall have appeared, and shall be paid as other claims against the state, county or municipality are paid; but in all such cases, the court shall first determine that the officer appeared and made defense in such proceeding in good faith.

Amd. Sec. 1, Ch. 5, L. 1925.

Under this section, as amended, where the applicant for a writ of mandate claims damages he must allege them in his application, or file a bill of particulars in the proceeding before conclusion of the hearing, and submit proof; otherwise damages are deemed waived and the court after final judgment entered is without jurisdiction to make award thereof in the proceeding. *State ex rel. Golden Valley County v. District Court*, 75 Mont. 122, 242 Pac. 421.

A public officer who is positively required by law to perform a ministerial act and who neglects or refuses to perform it, renders himself liable in costs as well as damages, under this section, and the award of costs in such a case is not discretionary. *State ex rel. Shea v. Cocking et al.*, 66 Mont. 169, 28 A. L. R. 772, 213 Pac. 594.

For text treatment of this subject see vol. 16 Cal. Jur. 880, 881.

CHAPTER 4.

WRIT OF PROHIBITION.

9861. Prohibition defined.

This and the following section were cited as sections 7227, 7228, Revised

Codes, in *State ex rel. Barnes v. District Court*, 59 Mont. 491, 492, 197 Pac. 565.

9862. Where and when issued.

Where it is apparent that the district court cannot under any conceivable circumstances render a valid judgment in a cause pending before it, and an appeal would be neither speedy nor adequate, the writ of prohibition will lie to prevent it from proceeding further. *State ex rel. Thibodeau v. District Court*, 70 Mont. 202, 224 Pac. 866.

The writ of prohibition lies to prevent a threatened improper use of property as evidence. *State ex rel. Thibodeau v. District Court*, 70 Mont. 202, 224 Pac. 866.

Cited in *State ex rel. Thibodeau v. District Court*, 70 Mont. 202, 207, 224 Pac. 866.

Where plaintiff had an appeal from a final judgment of a district court declaring forfeited liquors claimed by him and seized under the Prohibition Enforcement Act, he was not entitled to a writ of prohibition to stay further action in the proceeding. *State ex rel. Barnes v. District Court*, 59 Mont. 491, 197 Pac. 565.

Cited in *State ex rel. McLeod v. District Court*, 67 Mont. 164, 166, 215 Pac. 240.

For text treatment of this subject see vol. 21 Cal. Jur. 624-629.

CHAPTER 5.

ISSUANCE OF WRITS AND RULES OF PRACTICE AND APPEALS.

9866. Certain provisions applicable.

Cited in *State ex rel. Carroll v. District Court*, 69 Mont. 415, 422, 222 Pac. 444.

CHAPTER 6.

CONFESSION OF JUDGMENT WITHOUT ACTION.

9868. Judgment may be confessed for debt due or contingent liability.

Where defendant, in an action to recover a debt, in response to a summons out of a justice's court appeared in person on the day set for trial and orally

"acknowledged" judgment, he in effect admitted the allegations of the complaint and the judgment entered thereon was to all intents and purposes a judgment on the pleadings, and not open to the objection that as a "confession of judgment" it was void because not evidenced by a writing executed by defendant as

required by sections 9868 to 9871. (Hunter v. Eddy, 11 Mont. 251, holding otherwise, overruled.) State ex rel. Kennedy v. Hubbard, 77 Mont. 170, 253 Pac. 271.

For text treatment of this subject see vol. 14 Cal. Jur. 869.

9871. How—In justices' courts.

Cited in State ex rel. Kennedy v. Hubbard, 77 Mont. 170, 172, 253 Pac. 271.

CHAPTER 7.

SUBMISSION OF CONTROVERSIES WITHOUT ACTION.

9872. Controversies—How submitted without action.

Proceedings to determine heirship, while partaking in form of the nature of a civil action, are not such, and therefore the provisions of this section, permitting parties to submit a civil action for determination by the district court upon an agreed statement of facts, have no application to such proceedings. In

re Spriggs' Estate, 68 Mont. 92, 216 Pac. 1108.

Cited in Crow Creek Irr. Dist. v. Crittenden, 71 Mont. 66, 68, 227 Pac. 63.

For text treatment of this subject see vol. 23 Cal. Jur. 907.

CHAPTER 9.

SUMMARY PROCEEDINGS FOR OBTAINING POSSESSION OF REAL PROPERTY—FORCIBLE ENTRY AND UNLAWFUL DETAINER.

9887. Forcible entry defined.

Complaint in a justice's court in an action for forcible entry, alleging inter alia that defendant forcibly entered on the premises and in a forcible manner ejected the plaintiff, etc., held, sufficient to show that the acts were done violently, "force" and "violence" as the latter terms are used in this section, with relation to forcible entry and detainer, being synony-

mous. Lambert v. Helena Adjustment Co., 69 Mont. 510, 222 Pac. 1057.

Sections 9887-9906 were cited in Cashman v. Vickers et al., 69 Mont. 516, 522, 223 Pac. 897.

For text treatment of this subject see vol. 12 Cal. Jur. 596.

9888. Forcible detainer defined.

Sections 9888, 9889 were cited in Lambert v. Helena Adjustment Co., 69 Mont. 510, 515, 222 Pac. 1057.

9889. Unlawful detainer defined.

Under this section, providing for the recovery of damages in an action for unlawful detainer including rent, directors of a corporation lessee, who united in refusal to surrender possession after the term and after default in the payment of rent, may be joined as defendants and are individually liable, jointly and severally,

for the damages awarded, and directors who did not join in such refusal need not be made parties. Northwest Theaters Co. et al. v. Hansen, 4 Fed. (2d) 471.

For text treatment of this subject see vol. 15 Cal. Jur. 848.

9898. Trial by jury.

Cited in State ex rel. Shea v. Cocking et al., 66 Mont. 169, 179, 28 A. L. R. 772, 213 Pac. 594.

9901. Verdict and judgment.

Cited in Sullivan v. Big Horn County, 66 Mont. 45, 46, 212 Pac. 1105.

CHAPTER 11.

CONTEMPTS.

9908. What acts or omissions are contempts.

An attorney was cited for contempt and found guilty of an attempt to falsify the records of a court by offering an alleged minute entry of a plea of once in jeopardy containing a clause that the dismissal of the jury had been ordered over the defendant's objection, which statement the trial judge declared to be untrue. Held that the facts shown did not constitute an attempt to falsify court records. *State ex rel. Hurley v. District Court*, 76 Mont. 222, 246 Pac. 250.

Contempt proceedings are criminal in their nature, and the evidence must show that the accused is guilty beyond a reasonable doubt, otherwise he is entitled to his discharge. *State ex rel. Nett v. District Court*, 72 Mont. 206, 232 Pac. 204.

Cited in *State ex rel. Bacorn v. District Court*, 73 Mont. 297, 301, 236 Pac. 553.

As section 7309, Revised Codes, in *State v. District Court*, 61 Mont. 558, 567, 202 Pac. 756; *State v. District Court et al.*, 61 Mont. 346, 350, 202 Pac. 575.

Assault as contempt of court, note, 18 A. L. R. 212.

Forcing party or prosecuting witness to withdraw or not to institute action or proceeding as contempt of court, note, 23 A. L. R. 187.

Interference with enforcement of judgment in criminal case as contempt, notes, 21 A. L. R. 327; 47 A. L. R. 406.

Acts interfering with or prejudicing judicial or execution sale as contempt, note, 27 A. L. R. 1225.

Reflection on judge by grand or petit juror as contempt, note, 20 A. L. R. 908.

Procuring or attempting to procure witness to leave jurisdiction as contempt, notes, 21 A. L. R. 247; 36 A. L. R. 607.

Violation of injunction by one not a party to injunction suit, note, 15 A. L. R. 386.

Violation of injunction against boycott as contempt, notes, 6 A. L. R. 978; 16 A. L. R. 243; 27 A. L. R. 659.

Conduct of attorney in connection with making objections or taking exceptions during trial as contempt of court, note, 31 A. L. R. 1185.

Communicating with grand jury as contempt, note, 29 A. L. R. 489.

Presenting, obstructing or delaying service or execution of search-warrant, note, 39 A. L. R. 1354.

Mistreatment of prisoner as contempt, note, 40 A. L. R. 1278.

Subpoenaing unnecessary witnesses as contempt, note, 37 A. L. R. 1113.

Contempt by letter to court or judge regarding pending case, note, 31 A. L. R. 1239.

Practicing or pretending to practice law without authority as contempt, note, 36 A. L. R. 533.

For text treatment of this subject see vol. 5 Cal. Jur. 898 et seq.

9910. A contempt committed in the presence of the court may be punished summarily—When not so committed, an affidavit or statement shall be made.

While under this section, a contempt committed in the immediate view and presence of the court or judge, may be punished summarily, in the case of an "indirect" contempt—one committed without the immediate view and presence of the court—the court or judge acquires jurisdiction only by the filing of an affidavit or statement of the facts. *State ex rel. Stagg v. District Court*, 76 Mont. 495, 248 Pac. 213.

The filing of an affidavit disqualifying a district judge from hearing a case at issue, but when the court was not in session for the purpose of hearing it, if contemptuous at all, was not a direct contempt and therefore the court was without jurisdiction to try the contemnor in the absence of an affidavit or statement of the facts first filed. *State ex*

rel. Stagg v. District Court et al., 76 Mont. 495, 248 Pac. 213.

For discussion of acts constituting direct and indirect contempt of court, the case involving the filing of a disqualifying affidavit against a district judge, see *State ex rel. Stagg v. District Court*, 76 Mont. 495, 248 Pac. 213.

Where the trial court in its order finding one guilty of a direct contempt recites the facts occurring in its immediate view or presence, the supreme court cannot on certiorari look to the counter-statements of the accused, but must rely upon the recitals in the order of the court. *State ex rel. Hurley v. District Court*, 76 Mont. 222, 246 Pac. 250.

A contempt proceeding against a party to an action for refusal to answer questions as witness before a notary public

in taking his deposition for use by plaintiff in the action is criminal in its nature and entirely independent of the action itself; it must be instituted by affidavit which must state facts sufficient to disclose that a contempt has been committed, no intendments or presumptions in favor of its averments being permissible. *State ex rel. Bacorn v. District Court*, 73 Mont. 297, 236 Pac. 553.

Where a writ of mandate directed a sheriff to forthwith levy upon and sell property on execution, and an affidavit

was presented to the court two days later charging contempt in that the officer had failed and refused to comply with the order of the court and had not made return forthwith, the affidavit was insufficient to meet the requirement of this section that facts constituting the contempt must be alleged therein. *State ex rel. Duggan v. District Court*, 65 Mont. 197, 210 Pac. 1062.

For text treatment of this subject see vol. 5 Cal. Jur. 929, 938.

9916. Hearing.

A person charged with constructive contempt may make answer by affidavit, by a verified answer, or by a verbal plea of not guilty; and on the hearing should be permitted to present every defense to show that he is not guilty of

the contempt charged. *State ex rel. Nett v. District Court*, 72 Mont. 206, 232 Pac. 204.

For text treatment of this subject see vol. 5 Cal. Jur. 943.

9917. Judgment and penalty, if guilty.

Cited in *Davenport v. Davenport*, 69 Mont. 405, 411, 222 Pac. 422.

9921. Judgment and orders in such cases final.

Cited in *State ex rel. Nett v. District Court*, 72 Mont. 206, 210, 232 Pac. 204; as section 7532, Revised Codes, in *State*

v. District Court, 61 Mont. 558, 567, 202 Pac. 756.

CHAPTER 12.

DISSOLUTION OF CORPORATIONS BY THE DISTRICT COURT.

9927. Hearing of applications. After the time of publication has expired, the court or judge may, upon five days' notice to the persons who have filed objections, or without further notice if no objections have been filed, proceed to hear and determine the application, and if all the statements made therein are shown to be true, must, by judgment, declare the corporation dissolved. The court or judge, in such action, shall ascertain the names of the directors of said corporation then in office, and shall incorporate such names in the judgment of dissolution, and the persons so named shall be the trustees of the creditors and stockholders or members of such dissolved corporation. If in any judgment of dissolution heretofore entered, the court declared who were the trustees, such declaration is conclusive evidence thereof. It shall be the duty of the clerk of such district court to immediately file with the secretary of state a copy of the judgment provided for in this section duly certified by such clerk.

Amd. Sec. 1, Ch. 55, L. 1925.

For text treatment of this subject see vol. 7 Cal. Jur. 143.

CHAPTER 14.

EMINENT DOMAIN.

9933. Eminent domain defined.

Sections 9933, 9934 were cited in *Komposh v. Powers et al.*, 75 Mont. 493, 499, 244 Pac. 298; *State ex rel. McLeod*

v. District Court, 67 Mont. 164, 168, 215 Pac. 240.

9934. What are public uses.

Cited in *Komposh v. Powers et al.*, 75 Mont. 493, 502, 244 Pac. 298; *State ex*

rel. McLeod v. District Court, 67 Mont. 164, 168, 215 Pac. 240.

9936. Private property defined—Classes enumerated.

Land owned by a cemetery association organized for profit is private property, which, under this section, may be taken by eminent domain for public cemetery purposes. *Forestvale Cemetery Assn. v. Helena Cemetery Assn.*, 62 Mont. 52, 203 Pac. 359.

Right to condemn property previously condemned or purchased for public use but not actually so used, note, 12 A. L. R. 1502.

For text treatment of this subject see vol. 10 Cal. Jur. 314.

9937. Facts necessary to be found before condemnation.

Cited in *State ex rel. McLeod v. District Court*, 67 Mont. 164, 166, 215 Pac. 240.

9940. The complaint and its contents.

Description of lands sought to be condemned for a private road required by this section, to be set forth in the complaint, is sufficient if it is definite enough

to identify the lands. *Komposh v. Powers et al.*, 75 Mont. 493, 244 Pac. 298.

For text treatment of this subject see vol. 10 Cal. Jur. 395-401.

9943. Power of court to appoint commissioners, etc.

Cited in *Komposh v. Powers et al.*, 75 Mont. 493, 501, 244 Pac. 298.

9947. Appeals. An appeal from any assessment made by the commissioners may be taken and prosecuted in the court where the report of said commissioners is filed by any party interested. Such appeal must be taken within the period of thirty (30) days after the service upon appellant of the notice of the filing of the award by the service of notice of such appeal upon the opposing party or his attorney in such proceedings, and the same shall be brought on for trial upon the same notice and in the same manner as other civil actions, and unless a jury shall be waived by the consent of all parties to such appeal, the same shall be tried by jury, and the damages to which appellant may be entitled, by reason of the appropriation of his property, shall be reassessed upon the same principle as hereinbefore prescribed for the assessment of such damages by commissioners; upon any verdict or assessment by commissioners becoming final, judgment shall be entered declaring that upon judgment of such verdict or assessment, together with the interests and costs allowed by law, if any, the right to construct and maintain such railroad or other public work or improvement, and to take, use and appropriate the property described in such verdict or assessment, for the use and purposes for which said land has been con-

demned, shall, as against the parties interested in such verdict or assessment, be and remain in the plaintiff and his or its heirs, successors or assigns forever. In case the party appealing from the award of the commissioners in any proceeding, as aforesaid, shall not succeed in changing to his advantage the amount of damages finally awarded in such proceeding, he shall not recover the costs of such appeal, but all the costs of the appellee upon such appeal shall be taxed against and recovered from the appellant; provided, that upon the trial of such appeal, the plaintiff may contest the right of any party or parties thereto to any of the property mentioned and set forth or involved in said appeal, which was located after the preliminary survey of any such railroad, seeking to condemn its right of way under and pursuant to the provisions of this act; provided, such condemnation proceedings are begun within one year after such preliminary survey.

Amd. Sec. 1, Ch. 145, L. 1927.

9955. Private roads.

Whether a way is a public or private one is determined by the extent of the right to use it, not by the extent to which that right is actually exercised; and if a private road sought to be established under this section, leading from a public highway through lands of a private owner to those owned by plaintiff, may be used by the public generally, although others than plaintiff may have slight occasion to use it, the statute authorizing its establishment as this section does, under such circumstances is not open to con-

stitutional objection. *Komposh v. Powers et al.*, 75 Mont. 493, 244 Pac. 298.

Under this section and section 1765, authorizing the establishment of a private road, the appointment of commissioners, to determine the damages occasioned thereby, etc., is not necessary, the matters ordinarily determined by commissioners in eminent domain proceedings being determinable in such a case by the jury. *Komposh v. Powers et al.*, 75 Mont. 493, 244 Pac. 298.

CHAPTER 19.

PUBLIC ADMINISTRATOR.

10001. Estate moneys, escheats, etc.

Cited in *State v. McGraw*, 74 Mont. 152, 162, 240 Pac. 812.

CHAPTER 20.

GENERAL JURISDICTION OF DISTRICT COURTS.

10018. Jurisdiction of the court over the estate—When exercised.

A will made in another state by a resident of Montana is subject to probate under this section, relating to domestic wills, though proved and allowed in the foreign state, and not under sections 10039-10041, providing the manner in which a foreign will upon the production of a duly authenticated copy thereof and

its probate in another state may be admitted to probate in this state. In *re Mauldin's Estate*, 69 Mont. 132, 220 Pac. 1102.

For text treatment of this subject see vol. 11 Cal. Jur. 285.

10019. When jurisdiction decided by first application.

Cited in *In re Mauldin's Estate*, 69 Mont. 132, 135, 220 Pac. 1102.

CHAPTER 21.

PROBATE OF WILLS.

10029. Who may appear and contest the will.

Under this section an heir at law may contest a will through an attorney appointed by him, and the complaint need not allege that the one representing him is his attorney, it being presumed that an attorney at law who represents a client does so with the latter's consent and by virtue of his retainer. In *re Miller's Estate*, 71 Mont. 330, 229 Pac. 851.

Public administrator's or state's right to file caveat to or contest will, note, 18 L. R. A. 79.

Right of creditor of heir to contest will, note, 46 A. L. R. 1490.

Executor's or administrator's right to contest the will of his decedent, note, 31 A. L. R. 326.

For text treatment of this subject see vol. 26 Cal. Jur. 1081.

10030. Probate—When no contest. If no person appears to contest the probate of a will, the court or judge may admit the same to probate:

(a) On the testimony of one of the subscribing witnesses only, if he testifies that the will was executed in all particulars as required by law, and that the testator was of sound mind at the time of its execution.

(b) If it appears at the time fixed for the hearing that none of the subscribing witnesses reside in the county, and that the deposition of one of the witnesses to the will can be taken elsewhere, the court may direct it to be taken and may authorize a photographic copy of the will to be made and presented to such witness on his examination, who may be asked the same questions with respect to it and the handwriting of himself, the testator, and the other witness, as would be pertinent and competent if the original will were present.

(c) If none of the subscribing witnesses reside in the county at the time appointed for proving the will, and it is made to appear to the court that the execution of the will cannot be proven under either of the foregoing subdivisions of this section, the court may admit the testimony of other witnesses to prove the sanity of the testator and the execution of the will; and, as evidence of such execution, it may admit proof of the handwriting of the testator and of the subscribing witnesses, or any of them.

Amd. Sec. 1, Ch. 94, L. 1925.

For text treatment of this subject see vol. 26 Cal. Jur. 1067.

CHAPTER 22.

CONTESTING PROBATE OF WILLS.

10034. Verdict of jury—Judgment.

Cited in *In re Carroll's Estate*, 59 Mont. 403, 414, 196 Pac. 996.

CHAPTER 23.

PROBATE OF FOREIGN WILLS.

10039. Wills proved in other states to be recorded, when and where.

A will made in another state by a resident of Montana is subject to probate under section 10018 relating to domestic wills, though proved and allowed in a foreign state, and not under sections

10039-10041. In *re Mauldin's Estate*, 69 Mont. 132, 220 Pac. 1102.

For text treatment of this subject see vol. 26 Cal. Jur. 1053.

10040. Proceedings on the production of a foreign will.

The filing of a petition for the probate of a foreign will unaccompanied "by a copy of the will duly authenticated" as required by this section did not confer jurisdiction upon the district court to make an order admitting it to probate in this state. *Henderson et al. v. Daniels*, 62 Mont. 363, 205 Pac. 964.

Under this section and 10555, an attestation by the clerk of a probate court of another state that papers constituting the record of proceedings in that court were true and correct copies of the will and its probate there, without a certifi-

cate of the judge "that the attestation is in due form," was insufficient to entitle them to be admitted in evidence in this state, not being duly authenticated as required by section 10040. *Henderson et al. v. Daniels*, 62 Mont. 363, 205 Pac. 964.

Sections 10040 and 10041 were cited in *In re Coppock's Estate*, 72 Mont. 431, 433, 39 A. L. R. 1152, 234 Pac. 258.

For text treatment of this subject see vol. 26 Cal. Jur. 1053.

CHAPTER 24.**CONTESTING WILLS AFTER PROBATE.****10047. Costs and expenses—By whom paid.**

Under this section the trial court may in its discretion order that the costs incident to the revocation of the probate of a will be paid out of the property of the decedent if the revocation was resisted in good faith and upon substantial grounds, or, in case of bad faith and

without justification, tax them against the party who resisted revocation. *In re Carroll's Estate* 59 Mont. 403, 196 Pac. 996.

For text treatment of this subject see vol. 26 Cal. Jur. 1113-1117.

CHAPTER 27.**PERSONS TO WHOM AND ORDER IN WHICH LETTERS OF ADMINISTRATION ARE GRANTED.****10068. Order of persons entitled to administer—Partner not to administer.**

A decedent with estate in Montana left surviving her five children, two sons and two daughters resident in a foreign country and a daughter residing in Montana. Over the objections of the resident daughter who prayed for letters in her own behalf, the court appointed a resident nominee of the foreign heirs. Held, under sections 10068, 10069 and 10072, that the action of the court was correct, the nominee of the sons being entitled to preference over their resident sister, and the court having been without discretion to do otherwise. *In re Estate of Welscher*, 77 Mont. 164, 250 Pac. 447.

Under this section relatives of a decedent are entitled to administer only when they are entitled to succeed to his personal estate or some portion thereof. The widow under the will was "endowed in his estate, real and personal." In a proceeding seeking to debar the widow from nominating an administrator with

the will annexed, held that the testator by the use of the word "endowed" did not intend that she should be limited to her right of dower—a third part of his real property—but did intend that she should have the same portion of his estate, both real and personal, to which she would have been entitled had he died intestate. *In re McLure's Estate*, 63 Mont. 536, 208 Pac. 900.

Under this section, the surviving wife of a decedent is prima facie entitled to have letters of administration issued to her or some competent person designated by her, in preference to the mother of decedent. *State ex rel. Peel v. District Court*, 59 Mont. 505, 197 Pac. 741.

Cited in *State ex rel. McKennan v. District Court*, 69 Mont. 340, 344, 222 Pac. 426.

For text treatment of this subject see vol. 11 Cal. Jur. 308, 313.

10072. Who are incompetent to act as administrators.

Under this section, a person who is incompetent to serve as administrator by

reason of nonresidence may, if he or she fall within one of the five favored classes

therein enumerated, nominate a resident to serve, the right to nominate being absolute as to all the five classes enumerated in the section, in the order of their priority. *In re Estate of Welscher*, 77 Mont. 164, 250 Pac. 447.

Evidence that the nonresident sister of a decedent moved to Montana for the purpose of petitioning for letters of administration and with the intention of remaining, was sufficient to establish the fact of her residence in the state, in the absence of any declarations or actions showing a contrary intent and in view of the fact that she had no permanent residence anywhere else, and that she therefore was at the time of making pe-

tition for letters, about a month after her arrival in the state, a bona fide resident within the meaning of this section, requiring an administrator to be a bona fide resident of the state. *In re Estate of Nix*, 66 Mont. 559, 213 Pac. 1089.

Cited in *In re McLure's Estate*, 33 Mont. 536, 543, 208 Pac. 900.

Residence contemplated by statute or rule making residence within state qualification of executor or administrator, note, 18 A. L. R. 581.

For text treatment of this subject see vol. 11 Cal. Jur. 320, 332, 342, 343, 379-387.

CHAPTER 28.

PETITION FOR LETTERS OF ADMINISTRATION AND ACTION THEREON.

10077. Contesting application.

Where the district court, sitting in probate, instead of hearing a petition for letters of administration, a counterpetition and a motion to strike the original petition from the files, together, as required by this section, simply heard and granted the motion to strike, its

action was without authority of law, and void. *State ex rel. Peel v. District Court*, 59 Mont. 505, 197 Pac. 741.

For text treatment of this subject see vol. 11 Cal. Jur. 361.

10078. Hearing of application.

Cited as section 7442, Revised Codes, in *State ex rel. Peel v. District Court*, 59 Mont. 505, 517, 197 Pac. 741.

10082. Letters may be granted to others than those entitled.

Cited in *In re Estate of Welscher*, 77 Mont. 164, 168, 250 Pac. 447.

CHAPTER 30.

OATHS AND BONDS OF EXECUTORS AND ADMINISTRATORS.

10088. Bond of administrators, form and requirement of.

The general bond of an administrator given under this section covers all moneys coming into his hands, whether from sale of real property or otherwise; while the additional bond required by section 10089 upon sale of real property belonging to the estate is security for his acts in that

respect only. *Baker v. Hanson et al.*, 72 Mont. 22, 231 Pac. 902.

Cited in *In re Smith's Estate*, 60 Mont. 276, 298, 199 Pac. 696.

For text treatment of this subject see vol. 11 Cal. Jur. 391-396.

10089. Additional bonds—When required.

The additional bond which may be exacted from an administrator under this section, upon a sale of real property belonging to the estate in his charge, is distinct from the further security which may be required under sections 10094, 10099 and 10102, whenever his general bond is deemed insufficient, and, when required, the latter security becomes in

contemplation of law a part of his general bond and the sureties become subject to the same measure of liability. *Baker v. Hanson et al.*, 72 Mont. 22, 231 Pac. 902.

For text treatment of this subject see vol. 11 Cal. Jur. 934, 942.

10090. Condition of bonds.

Cited in *In re Smith's Estate*, 60 Mont. 276, 298, 199 Pac. 696.

10094. Citation and requirements of judge on deficient bond—Additional security.

Cited in *Baker v. Hanson et al.*, 72 Mont. 22, 31, 231 Pac. 902.

10099. Further security may be ordered.

Cited in *Baker v. Hanson et al.*, 72 Mont. 31, 231 Pac. 902.

10102. Further security without application of party in interest.

Cited in *Baker v. Hanson et al.*, 72 Mont. 22, 31, 231 Pac. 902.

CHAPTER 31.**SPECIAL ADMINISTRATORS AND THEIR POWERS AND DUTIES.****10107. Special administrators—When appointed.**

The intent of this section construed with sections 10108 and 10109, where there is a will valid on its face, is to require the court or judge in appointing a special administrator to give preference to the person named as executor, and where an executor is not named in the will, to give preference to the person entitled to letters of administration.

State ex rel. McKennan v. District Court, 69 Mont. 340, 22 Pac. 426.

Cited in *Nathan v. Freeman et al.*, 70 Mont. 259, 270, 41 A. L. R. 138, 225 Pac. 1015.

For text treatment of this subject see vol. 12 Cal. Jur. 247.

10108. Special letters may issue at any time.

Sections 10108 and 10109 were cited in *State ex rel. McKennan v. District Court*, 60 Mont. 340, 343, 222 Pac. 426.

10111. Duties of special administrator.

Circumstances may arise in the administration of an estate in which the probate court, under this section, may authorize a special administrator to vote corporate stock of the estate in order to preserve its value. *Gow v. Cascade*

Silver Mines & Mills Co., 66 Mont. 483, 213 Pac. 1092.

For text treatment of this subject see vol. 12 Cal. Jur. 254.

CHAPTER 34.**REMOVAL AND SUSPENSION OF EXECUTORS AND ADMINISTRATORS.****10124. Suspension of powers of executor.**

Cited in *In re Connolly's Estate*, 73 Mont. 35, 44, 235 Pac. 408.
Sections 10124, 10125, were cited in

Mayger v. St. Louis Mining etc. Co., 68 Mont. 492, 500, 219 Pac. 1102.

CHAPTER 35.**INVENTORY AND APPRAISEMENT—POSSESSION OF ESTATE.****10131. Oath of appraisers and inventory.**

Cited in *In re Connolly's Estate*, 73 Mont. 35, 57, 235 Pac. 408.

10133. Effect of naming a debtor executor.

Construing this section, which provides that an executor who was indebted to his testator at the time of the latter's death is liable for the amount owing as for money in his hands when the debt becomes due, held that the statute merely abrogates the common-law rule whereby the bare appointment of an executor operated to extinguish any debt due from the executor to testator. In *re Connolly's Estate*, 73 Mont. 35, 235 Pac. 408.

An executor who was indebted to testator at the time of the latter's death was entitled to credit on settlement of his account for partial payments made by him while acting in his representative capacity, and the holding of the trial court that payments on account could not be made under this section, since thereunder the executor was liable for the whole debt as for money in his hands

and that the payments made were mere voluntary contributions, was error. In *re Connolly's Estate*, 73 Mont. 35, 235 Pac. 408.

An executor who held trust funds of the decedent in his possession at the time he qualified as such at once became liable therefor as for money in his hands, under this section, with interest thereon from the death of decedent, and by thereafter continuing to mingle the funds, as he had done theretofore, with his own moneys and using it in connection with his business until it was lost, he was bound to account for it with interest. In *re Rodgers' Estate*, 68 Mont. 46, 217 Pac. 678.

For text treatment of this subject see vol. 11 Cal. Jur. 472, 473.

10135. To make oath to inventory.

Cited in *In re Connolly's Estate*, 73 Mont. 35, 57, 235 Pac. 408.

10138. Administrator and executor to possess real and personal estate.

This section confers the same right upon the heirs as is given to an administrator by section 10258 to maintain an action for the recovery of real property of his intestate. *Lamont v. Vinger*, 61 Mont. 530, 202 Pac. 769.

Cited in *In re Jennings' Estate*, 74 Mont. 449, 454, 241 Pac. 648; In *re Brad-*

field's Estate, 69 Mont. 247, 260, 221 Pac. 531; In *re Estate of Deschamps*, 65 Mont. 207, 212, 212 Pac. 512; as section 7502, Revised Codes, in *In re Smith's Estate*, 60 Mont. 276, 297, 199 Pac. 696.

For text treatment of this subject see vol. 11 Cal. Jur. 1005 et seq.

10139. Executor or administrator to deliver real estate to heirs or devisees, when.

Under this section, when the time for the presentation of claims against an estate has expired and all the debts of the decedent have been paid, the court is without discretion in the premises but must deliver the real property to the heirs or devisees. In *re McGovern's Estate*, 77 Mont. 182, 250 Pac. 812.

Rents and profits of real estate specifically devised, when not needed for the

payment of debts or for administration purposes, are payable to the devisee and not to the residuary legatee. In *re Bradford's Estate*, 69 Mont. 247, 221 Pac. 531.

Cited in *In re Jennings' Estate*, 74 Mont. 449, 454, 241 Pac. 648.

For text treatment of this subject see vol. 11 Cal. Jur. 1009.

CHAPTER 36.**PROCEEDINGS TO COMPEL DISCLOSURE OF PROPERTY OF AN ESTATE—LIABILITY FOR EMBEZZLEMENT.****10141. Citation to person suspected to have embezzled estate, etc.**

An order of the district court sitting in probate made pursuant to a citation to a former administrator under sections 10141, 10142, to appear and be examined concerning his disposition of personal property belonging to the estate, cannot go further than require a disclosure to

be used in an action pending or to be brought in behalf of the estate; it cannot finally adjudicate any right. *Baker v. Hanson et al.*, 72 Mont. 22, 231 Pac. 902.

For text treatment of this subject see vol. 11 Cal. Jur. 476.

10142. Refusal to obey citation, penalty for and for embezzlement—May be compelled to disclose by imprisonment—Liable for double damages.

Cited in *Baker v. Hanson et al.*, 72 Mont. 22, 34, 231 Pac. 902.

CHAPTER 37.

PROVISIONS FOR THE SUPPORT OF THE FAMILY.

10144. Widow and minor children may remain in decedent's house, etc.

Where in an antenuptial agreement the wife released her dower rights in all of the real estate then owned or thereafter to be acquired by the husband, and all other rights, title, interest, property, claim and demand whatsoever at law or in equity in such real estate; assigned to him any claim she might be entitled to after becoming his wife or widow in any personal property then owned or which might be acquired by him thereafter, and agreed that in consideration of \$150,000 she would make no further claim against him or his estate for any share therein to which as his widow she might be entitled to, she thereby waived her right to an allowance for her support authorized by sections 10144-10147, during administration of the deceased husband's estate. In *re Oppenheimer's Estate*, 73 Mont. 560, 238 Pac. 599.

Where at the time a petition for a family allowance was filed the estate was and had for some time been ready to be closed and a reasonable time had elapsed for the settlement of its affairs, the court abused its discretion in granting the petition. In *re Trapp's Estate*, 71 Mont. 154, 227 Pac. 1105.

Sections 10144-10146 were cited in *In re Eakin's Estate*, 64 Mont. 84, 87, 208 Pac. 956.

Nonresident's right to widow's or child's allowance out of estate of one who was domiciled in state, note, 26 A. L. R. 132.

Separation agreement as affecting right to statutory allowance, note, 35 A. L. R. 1518.

For text treatment of this subject see vol. 11 Cal. Jur. 493, 502, 511, 515, 522.

10145. All property exempt from execution to be set apart for use of family.

Where decedent left his entire property in equal shares to his widow and a daughter by a former marriage, the instrument not showing that it was devised or bequeathed to the former in lieu of her homestead right, she was not precluded from claiming a probate homestead by taking under the will. In *re Trapp's Estate*, 71 Mont. 154, 227 Pac. 1005.

The homestead authorized to be selected by the probate court under this

section, where none was selected prior to the death of decedent, is the homestead provided for by sections 6945-6948, and therefore the value and extent of it must not be any greater than as prescribed by those sections. In *re Tripps' Estate*, 71 Mont. 154, 227 Pac. 1005.

For text treatment of this subject see vol. 11 Cal. Jur. 547 et seq., 584 et seq.

10146. May make extra allowance.

Cited in *In re Eakins' Estate*, 64 Mont. 84, 89, 208 Pac. 956.

10147. Payment of allowance.

Applied with section 10144 in *In re Oppenheimer's Estate*, 73 Mont. 560, 238 Pac. 599.

CHAPTER 38.

THE HOMESTEAD—PROCEDURE TO SET APART.

10151. Rights of survivor to homestead.

Sections 10151-10157 were cited in *In re Tripps' Estate*, 71 Mont. 154, 160, 227 Pac. 1005.

CHAPTER 40.

CLAIMS AGAINST THE ESTATE.

10170. Notice to creditors—Additional notice.

This section provides that the executor or administrator of an estate shall publish a notice to the creditors of the estate to present their claims to him "at the place of his residence or business, to be specified in the notice." The notice published by defendant executor was to the effect that claims should be presented "to the executor" of decedent's estate "at the city of Billings" without specifying his place of residence or business. Held, under the above rule that the notice was insufficient, and that the court's holding that plaintiff's claim was barred because not presented within the period for presentation fixed in the notice was error. *Roche Valley Land Co. v. Barth et al.*, 67 Mont. 353, 215 Pac. 654.

The notice to creditors of an estate

prescribed by this section, and required to be published by the executor or administrator, is in the nature of a process, and its requirements must be complied with in all essentials. *Roche Valley Land Co. v. Barth et al.*, 67 Mont. 353, 215 Pac. 654.

A valid presentation of a claim of a creditor against an estate may be made before notice to creditors is given. *Roche Valley Land Co. v. Barth et al.*, 67 Mont. 353, 215 Pac. 654.

Sections 10170, 10171 were cited in *State ex rel. Petters & Co. v. District Court*, 76 Mont. 143, 147, 245 Pac. 529.

For text treatment of this subject see vol. 11 Cal. Jur. 640.

10173. Time within which claims against an estate to be presented.

Where after the estate of a deceased person had been distributed, the holder of a real estate mortgage executed by decedent during his lifetime commenced suit to foreclose without asking for a deficiency judgment, the sole heir not answering, the district court erred in dismissing the suit for want of jurisdiction because of plaintiff's failure to allege that he had presented his claim to the administrator or, in the absence of presentation of such claim, that he waived all recourse against the decedent's property other than that covered by the mortgage, since the provisions of sections 10173 and 10180, are applicable only to an estate still in course of administration and not to one that has been closed. *State ex rel. Petters & Co. v. District Court*, 76 Mont. 143, 245 Pac. 529.

The estate of a deceased person dealt with by sections 10173 and 10180, the intent of which is to permit a mortgagee to foreclose his mortgage although the mortgagor has died, provided the mortgagee shall not have recourse against any other property of the decedent's estate unless he first presents his mortgage claim to the executor or administrator in accordance with the statute, ceases to exist upon entry of decree of distribution which is conclusive and has the force of res. adjudicata; after the estate is declared closed the court has neither jurisdiction over the property of the estate nor the executor or administrator. *State ex rel. Petters & Co. v. District Court*, 76 Mont. 143, 245 Pac. 529.

Claims for rentals falling due under a

lease the term of which had not expired at the time the lessee died and the property covering which was thereafter occupied by his executor in his representative capacity, held to have been "claims arising upon contracts not due" within the meaning of this section, which must be presented to the executor within the time specified in the notice to creditors to save them from being barred. *Nathan v. Freeman*, 70 Mont. 259, 41 A. L. R. 138, 225 Pac. 1015.

This section, providing that claims against a decedent's estate arising upon contracts, whether due, not due or contingent, are barred unless presented to the executor within the time limited in the notice to creditors, and section 10180, declaring that a creditor cannot maintain suit on his claim (excepting a mortgage debt or claim for funeral expenses) unless so presented, have reference only to indebtedness of the deceased contracted by him in his lifetime and existent at the time of death, and therefore have no application to obligations arising subsequent to his death by reason of a breach of an executory contract, such latter obligation becoming by operation of law that of his personal representative. *Nathan v. Freeman et al.*, 70 Mont. 259, 41 A. L. R. 138, 225 Pac. 1015.

A claim of an executor against the estate in his charge must be presented for allowance within the same time as the claims of other creditors, and if not so presented is barred under the provisions of this section. In *re Rodgers' Estate*, 68 Mont. 46, 217 Pac. 678.

Where a partnership is dissolved by death, and upon liquidation of its affairs, or in course thereof, it appears that the deceased partner was indebted to the survivor in an amount over and above the partnership assets, the latter must present his claim for allowance under the provisions of this section. *Mares v. Mares et al.*, 60 Mont. 36, 199 Pac. 267.

Cited as section 7525, Revised Codes, in *King v. Mayor of City of Butte*, 71 Mont. 309, 312, 230 Pac. 62; *Roche Valley Land*

Co. v. Barth et al., 67 Mont. 353, 356, 215 Pac. 654; *Nevin-Frank Co. v. Hubert*, 67 Mont. 50, 54, 214 Pac. 959.

Presentation of claim as condition precedent to action on contingent claim, note, 34 A. L. R. 372.

Applicability of nonclaim statutes to claims arising under executory contract, notes, 41 A. L. R. 144; 47 A. L. R. 896.

For text treatment of this subject see vol. 11 Cal. Jur. 654, 664 et seq.

10174. Claims to be sworn to, and when allowed to bear same interest as judgment.

In the absence of statute so providing, a claim against the estate of a debtor held by assignment need not be verified by the assignor. *Nevin-Frank Co. v. Hubert*, 67 Mont. 50, 214 Pac. 959.

Where the claim of a corporation against an estate as presented to the executrix was otherwise sufficient, the fact that the verification made by its president in its behalf did not contain the statement that the claimant was a corporation, a fact admitted at the trial by defendant executrix, did not render it fatally defective. *Nevin-Frank Co. v. Hubert*, 67 Mont. 50, 214 Pac. 959.

Where a claim against an estate showed on its face that it was made by claimant as guardian, the fact that the verification required by this section was made by him individually without any reference to his official capacity as guardian did not render the claim fatally defective. In *re Stinger Estate*, 61 Mont. 173, 201 Pac. 693.

An affidavit made by the bookkeeper of a corporation, without setting forth the reason why the claimant itself did not make it, was an improper verification under this section, and the recital that the claimant is a corporation was insufficient to cure the defect. *The Ullman Co. v. Adler*, 59 Mont. 232, 196 Pac. 157.

The affidavit called for by this section, to accompany a claim against an estate, is not required as evidence of the ex-

istence of the debt, but as evidence of good faith to prevent the presentation of spurious or fictitious claims. *The Ullman Co. v. Adler*, 59 Mont. 232, 196 Pac. 157.

There must be a substantial compliance with the requirements of every provision of this section, specifying what the verification of a claim against the estate of the decedent must contain; where there is no such compliance, the claim is ineffectual as a basis for legal liability. *The Ullman Co. v. Adler*, 59 Mont. 232, 196 Pac. 157.

Where the affidavit in verification of a claim against an estate omitted to set forth that no payments had been made thereon which were not credited as required by this section, it was ineffectual as a basis of legal liability against it, and neither itemization of the claim, in the shape of debits and credits, nor the statement that the claim was lawful, just, true and correct, nor the vouchers and proofs which may be required by the executor or administrator, could supply the defect. *The Ullman Co. v. Adler*, 59 Mont. 232, 196 Pac. 157.

Sections 10174-10176 were cited in *State ex rel. Rankin v. Yellowstone Bank etc. Co.*, 75 Mont. 43, 50, 243 Pac. 813; *Burnett v. Neraal*, 67 Mont. 189, 191, 214 Pac. 955; *Nevin-Frank Co. v. Hubert*, 67 Mont. 50, 54, 214 Pac. 959.

For text treatment of this subject see vol. 11 Cal. Jur. 704, 712, 732.

10177. Approved claims or copies to be filed—Claims secured by liens may be described—Lost claims.

Under this section, a claim against the estate of a decedent, founded upon a promissory note which is neither lost nor destroyed must be accompanied either by the original note or a copy of it when presented to the executor or administrator for allowance; where not so accom-

panied the claim may properly be rejected. *Burnett v. Neraal*, 67 Mont. 189, 214 Pac. 955.

For text treatment of this subject see vol. 11 Cal. Jur. 705, 707, 734, 743, 755.

10178. Limitation of actions on rejected claims. When a claim is rejected either by the executor or administrator, or the judge, the holder

must bring suit in the proper court against the executor or administrator within three months after the date such claim is filed, with indorsement thereon showing the rejection thereof, in whole or in part, in the office of the clerk of court in which the proceedings are pending, if it be then due, or within two months after it becomes due, otherwise the claim shall be forever barred.

Amd. Sec. 1, Ch. 11, L. 1925.

The fact that the first action brought against an executrix after rejection of a claim was dismissed for want of jurisdiction to determine the merits does not establish that the action was not brought in a proper court as required by this section and does not prevent a new action within one year after such dismissal un-

der section 9054. *Gilmore v. Gilmore*, 270 Fed. 260.

Cited as section 7530, Revised Codes, in *In re Smith's Estate*, 60 Mont. 276, 298, 199 Pac. 696; *The Ullman Co. v. Adler*, 59 Mont. 232, 234, 196 Pac. 157.

For text treatment of this subject see vol. 11 Cal. Jur. 774.

10180. Claims must be presented before suit.

This section and section 10173 have reference only to the indebtedness of the deceased contracted by him during his lifetime, and existent at the date of his death. *Nathan v. Freeman et al.*, 70 Mont. 259, 41 A. L. R. 138, 225 Pac. 1015.

Applied with section 10173 in *State ex rel. Petters & Co. v. District Court*, 76 Mont. 143, 245 Pac. 529.

Cited as section 7532, Revised Codes, in *The Ullman Co. v. Adler*, 59 Mont. 232, 234, 196 Pac. 157.

For text treatment of this subject see vol. 11 Cal. Jur. 573, 632, 654, 656, 770-780, 1126.

10185. Effect of judgment against executor.

Cited in *State ex rel. Rankin v. Yellowstone Bank etc. Co.*, 75 Mont. 43, 50, 243 Pac. 813; as section 7536, Revised

Codes, in *Lamont v. Vinger*, 61 Mont. 530, 543, 202 Pac. 769; *In re Smith's Estate*, 60 Mont. 276, 296, 199 Pac. 696.

10191. Claims of executor, etc., against the estate.

Cited in *In re Rodgers' Estate*, 68 Mont. 46, 55, 217 Pac. 678.

10194. Executor may pay interest.

Cited in *In re Jennings' Estate*, 74 Mont. 449, 465, 241 Pac. 648.

CHAPTER 41.

**SALES OF PROPERTY OF ESTATE IN GENERAL—BORROWING MONEY—
SALES OF PERSONAL PROPERTY.**

10195. Estate chargeable with debts—No priority.

Cited in *In re McGovern's Estate*, 77 Mont. 182, 197, 250 Pac. 812; *Mathews*

v. Marsden et al., 71 Mont. 502, 511, 230 Pac. 775.

10196. Money may be borrowed.

Cited as section 7547, Revised Codes, in *Lamont v. Vinger*, 61 Mont. 530, 542, 202 Pac. 769.

10197. No sales valid except by order of district court.

Cited in *In re Jennings' Estate*, 74 Mont. 449, 457, 241 Pac. 648.

CHAPTER 43.

SALES OF REAL ESTATE AND REALTY CONTRACTS.

10210. Executor or administrator may sell property, when.

Sections 10210, 10211 were cited in *In re McLure's Estate*, 76 Mont. 476, 487, 248 Pac. 362.

were cited as sections 7561-7565, Revised Codes, in *Lamont v. Vinger*, 61 Mont. 530, 538, 202 Pac. 769.

This and the four following sections

10212. Citation to interested persons to appear. If it appears to the court or judge, from such petition, that it is necessary, or that it would be for the advantage, benefit, and best interests of the estate, and those interested therein, including the minor heirs, if any, to sell the whole or some portion of the real estate, for the purposes and reasons mentioned in the preceding section, or any of them, such petition must be filed, and an order thereupon made, directing all persons interested in the estate to appear before the court or judge, at a time and place specified, not less than fifteen, nor more than thirty days from the time of making such order, to show cause why an order should not be granted to the executor or administrator to sell so much of the real estate of the decedent as is necessary.

Amd. Sec. 1, Ch. 67, L. 1927.

Where the proceedings had before the probate court on application by an administrator for an order of sale of real property disclosed that no order to show cause was ever made, published or served upon the parties interested, the sale was void for want of jurisdiction and open

to collateral attack. *Lamont v. Vinger*, 61 Mont. 530, 202 Pac. 769.

Cited in *In re McGovern's Estate*, 77 Mont. 182, 198, 250 Pac. 812.

For text treatment of this subject see vol. 11 Cal. Jur. 908.

10213. Copy to be served—Assent or publication. A copy of the order to show cause must be personally served on all persons interested in the estate, any general guardian of a minor so interested, and any legatee, or devisee, or heir of the decedent, provided they are residents of the county. If any such persons are not residents of the county the clerk of the court must forthwith deposit a copy of the order in the postoffice, registered, postage prepaid, directed to the person to be served, at his place of residence, such service to be at least ten days before the time appointed for hearing the petition, or such order may be published once a week for two consecutive weeks in such newspaper in the county as the court or judge may direct. If all persons interested in the estate join in the petition for the sale or signify in writing their assent thereto, the notice may be dispensed with, and the hearing may be had at any time.

Amd. Sec. 2, Ch. 67, L. 1927.

For text treatment of this subject see vol. 11 Cal. Jur. 909.

10216. To sell real estate, or any part, when.

Cited in *In re McGovern's Estate*, 77 Mont. 182, 198, 250 Pac. 812; as section

7567, Revised Codes, in *Lamont v. Vinger*, 61 Mont. 530, 539, 202 Pac. 769.

10219. Interested persons may apply for order of sale—Form of petition.

Cited in *In re McLure's Estate*, 76 Mont. 476, 487, 248 Pac. 362.

10220. Notice of sale. When a sale is ordered, and it is to be made at public auction, notice of the time and place must be posted in three of the most public places in the county in which the land is situated, and published once in a newspaper, if there be one printed in the same county, but if none, then in such paper as the court or judge may direct, not less than seven days before the date of sale; the lands and tenements to be sold must be described with common certainty in the notice.

Amd. Sec. 3, Ch. 67, L. 1927.

For text treatment of this subject see vol. 11 Cal. Jur. 916.

10225. Return of proceedings—Notice of hearing—Setting aside sale—Resale.

Where the probate court refuses to confirm an administrator's sale of real property made under its order, it must under this section, order a resale. In *re McLure's Estate*, 76 Mont. 476, 248 Pac. 362.

If an administrator's sale of real property may, under this section, be set aside for inadequacy of consideration alone without a showing that on resale a bid exceeding that received by at least ten per cent may be had, the rule can exist only in cases where it is made to appear that the bid made is so grossly inadequate as to raise a presumption of fraud

and unfairness in the conduct of the sale. In *re McLure's Estate*, 76 Mont. 476, 248 Pac. 362.

The district court, under this section, may set aside an administrator's sale of the decedent's real property if it is made to appear that the proceedings were unfair, or that the bid was disproportionate to its value and that, on a resale, a bid exceeding that received by at least ten per cent might be had. In *re McLure's Estate*, 76 Mont. 476, 248 Pac. 362.

For text treatment of this subject see vol. 11 Cal. Jur. 862, 925-934.

10226. May file objections, when and who.

While an administrator is not one of the "persons interested in the estate" who may file objections to the confirmation of a sale of the estate under this section, and his recommendation when making return of the sale that the sale be not confirmed may have been insufficient to give the court jurisdiction to make an order refusing to confirm, where the bidders by a petition filed subsequent to the re-

turn asked that a hearing be had thereon as they could do under this section as parties most interested in the confirmation, it was vested with jurisdiction to proceed. In *re McLure's Estate*, 76 Mont. 476, 248 Pac. 362.

For text treatment of this subject see vol. 11 Cal. Jur. 927.

10227. When order of confirmation is to be made, and when not.

Cited in *In re McLure's Estate*, 76 Mont. 476, 489, 248 Pac. 362.

10228. Conveyances.

Cited in *In re McLure's Estate*, 76 Mont. 476, 486, 248 Pac. 362.

10245. Limitation of actions for vacating sale, etc.

An action to recover real property sold by an administrator under an alleged void order of sale, brought after the limitation prescribed by this section, within which an heir must commence his action had expired, but within the three-

year period after reaching his majority (sec. 10246) was not barred. *Lamont v. Vinger*, 61 Mont. 530, 202 Pac. 769.

For text treatment of this subject see vol. 11 Cal. Jur. 878-883.

10246. To what cases preceding section not to apply.

Applied with section 10245 in *Lamont v. Vinger*, 61 Mont. 530, 202 Pac. 769.

CHAPTER 44.

MORTGAGING AND LEASING REAL ESTATE.

10249. Judge may empower administrator to mortgage or lease real estate.

Sections 10249-10255 were cited as sections 7600, 7601 in *Lamont v. Vinger*, 61 Mont. 530, 542, 202 Pac. 769.

10251. Order to show cause. Upon filing such petition an order must be made by the court or judge, requiring all persons interested in the estate to appear before the court or judge, at a time and place specified, not less than fifteen (15) nor more than thirty (30) days thereafter, then and there to show cause why the realty (briefly indicating it); or some part thereof, should not be mortgaged for the amount mentioned in the petition (stating such amount), or such lesser amount as to the court or judge shall seem meet, and referring to the petition on file for further particulars.

Amd. Sec. 1, Ch. 70, L. 1927.

For text treatment of this subject see vol. 11 Cal. Jur. 962.

10252. Service of order—Assent to petition. The order to show cause may be personally served on the persons interested in the estate, at least ten (10) days before the time appointed for hearing the petition, or it may be published once a week for two (2) successive weeks in such newspaper published in the county, as the court or judge shall direct. If all persons interested in the estate join in the petition or signify in writing their assent thereto, the notice may be dispensed with, and the hearing may be had at any time; provided, further, that if such petition is for the purpose of extending or renewing any mortgage already subsisting on said realty, or on some part thereof, and the court finds such extension or renewal necessary or to the best interest of the estate, the court may make an order authorizing the extension or renewal of such mortgage without notice.

Amd. Sec. 2, Ch. 70, L. 1927.

For text treatment of this subject see vol. 11 Cal. Jur. 961.

10256. Obtaining order to lease. To obtain an order to lease the realty, the proceedings to be taken and the effect thereof shall be as follows:

1. The executor, administrator, or any person interested in the estate, may file a verified petition showing: The advantage or advantages that may accrue to the estate from giving a lease; a general description of the property proposed to be leased; the term, rental, and general conditions of the proposed lease; and the names of the legatees and devisees, if any, and of the heirs of the deceased, so far as known to the petitioner.

2. Upon filing such petition an order must be made by the court or judge, requiring all persons interested in the estate to appear before the court or judge, at a time and place specified, not less than two nor more than four weeks thereafter, then and there to show cause why the realty (briefly indicating it) should not be leased for the period (stating it), at the rental mentioned in the petition (stating it), and referring to the petition on file for further particulars.

3. The order to show cause must be personally served on the persons residing in the county interested in the estate, at least ten days before the time appointed for hearing the petition, or be published for two successive weeks in a newspaper of general circulation published in the county.

4. At the time and place appointed in the order to show cause, or such other time and place to which the hearing may be postponed, the court or judge having first received satisfactory proof of personal service or publication of the order to show cause, must proceed to hear the petition, and any objections that may be filed or presented thereto. Upon such hearing, witnesses may be compelled to attend and testify in the same manner and with like effect as in other cases, and the court or judge may, in its or his discretion, appoint one or more, not exceeding three, disinterested persons to appraise the rental value of the premises, and direct that a reasonable compensation for their services, not to exceed five dollars per day, be paid by the estate. If, after a full hearing, the court or judge is satisfied that it will be for the advantage of the estate to lease the whole or any portion of the real estate, an order must be made authorizing, empowering, and directing the executor or administrator to make such lease. The order may prescribe the minimum rental to be received for the premises, and the period of the lease, which must in no case be longer than for five years, except that a lease or contract providing for the exploration of the premises for oil, gas or hydrocarbons may provide for a term of five years or for as long thereafter as oil, gas or hydrocarbons shall be produced in commercial quantities, and may prescribe the other terms and conditions of such lease.

5. After the making of the order to lease, the executor or administrator must execute, acknowledge, and deliver a lease of the premises, for the rent, and period, and with the conditions specified in the order such lease before it shall become effective shall be approved by the court or judge thereof before delivery, setting forth in the lease that it is made by authority of the order, and giving the date of such order. A certified copy of the order shall be recorded in the office of the county clerk of every county in which the leased land, or any portion thereof, lies.

6. Every lease so made shall be effectual to demise and let, at the rent, for the term, and upon the conditions prescribed therein, the premises described therein. Jurisdiction of the court to administer the decedent's estate shall be effectual to vest such court and judge with jurisdiction to make the order for the lease, and such jurisdiction shall conclusively inure to the benefit of the lessee, his heirs and assigns. No

omission, error, or irregularity in the proceedings impairs or invalidates the same, or the lease made in pursuance thereof.

Amd. Sec. 1, Ch. 113, L. 1923.

For text treatment of this subject see vol. 11 Cal. Jur. 969.

CHAPTER 45.

GENERAL POWERS AND DUTIES OF EXECUTORS AND ADMINISTRATORS— TO RECOVER PROPERTY—TO MAINTAIN ACTIONS—OTHER POWERS.

10257. Executors to take possession of the entire estate.

For discussion of the duties of an administrator with respect to the management of an estate, and his liability for failure to exercise due diligence in such management, see *In re Jennings' Estate*, 74 Mont. 449, 241 Pac. 648; *Scott et al. v. Tuggle*, 74 Mont. 476, 241 Pac. 229. Cited in *In re Bradfield's Estate*, 69

Mont. 247, 261, 221 Pac. 531; *Mayger v. St. Louis Mining etc. Co.*, 68 Mont. 492, 500, 219 Pac. 1102.

For text treatment of this subject see vol. 9 Cal. Jur. 473; vol. 11 Cal. Jur. 995, 996, 1005, 1060.

10258. Executors may sue and be sued for recovery of property.

The right given to an administrator by this section, to maintain an action for the recovery of real property of his intestate (if applicable to an action to recover property sold by him under an order of sale) is not exclusive, section 10138 conferring the same right upon the heirs. *Lamont v. Vinger*, 61 Mont. 530, 202 Pac. 769.

Cited in *In re Estate of Deschamps*, 65 Mont. 207, 215, 212 Pac. 512.

For text treatment of this subject see vol. 1 Cal. Jur. 69, 72; vol. 11 Cal. Jur. 1055, 1091, 1115.

10261. Surviving partner to settle business—Interest therein to be appraised—Account to be rendered.

Where the affairs of a general partnership dissolved by death were not fully settled, an action for an accounting by the surviving partner for his sole benefit, against the executrix of the decedent did not lie, in view of the provisions of this section, which inter alia make it the duty of the survivor who, in contemplation of law, is in actual possession of the

partnership property, to wind up its affairs, and thereupon account to the personal representative of the decedent. *Mares v. Mares et al.*, 60 Mont. 36, 199 Pac. 267.

For text treatment of this subject see vol. 11 Cal. Jur. 1029-1033, 1099; vol. 20 Cal. Jur. 794, 807 et seq., 829.

CHAPTER 46.

CONVEYANCE OF REAL ESTATE BY EXECUTORS AND ADMINISTRATORS.

10279. Curative deeds.

Under the constitutional provision that no one shall be deprived of property without due process of law, a curative act cannot go to the extent of supplying jurisdiction where there was none in the first instance because of lack of notice and opportunity to be heard. Under this rule it was held that this section was

ineffectual to cure the fatal omission of the court to take the steps necessary to give it jurisdiction to make an order of sale of the real property of an intestate. *Lamont v. Vinger*, 61 Mont. 530, 202 Pac. 769.

Cited in *Harwood v. Scott*, 65 Mont. 521, 530, 211 Pac. 316.

CHAPTER 47.

LIABILITIES AND COMPENSATION OF EXECUTORS AND ADMINISTRATORS.

10282. Executor to be charged with all estate, etc.

Cited in *Scott et al. v. Tuggle*, 74 Mont. 476, 481, 241 Pac. 229; *In re Jennings' Estate*, 74 Mont. 449, 463, 241 Pac. 648; *In re Connolly's Estate*, 73 Mont.

35, 55, 235 Pac. 408; *In re Bradfield's Estate*, 69 Mont. 247, 261, 221 Pac. 531; *Mayger v. St. Louis Mining etc. Co.*, 68 Mont. 492, 500, 219 Pac. 1102.

10283. Not to profit or lose by estate.

Sections 10283, 10284 were cited in *In re Connolly's Estate*, 73 Mont. 35, 45, 235 Pac. 408.

10284. Uncollected debts without fault.

Neither an executor nor an administrator is liable in his representative capacity upon any debt due his decedent as for money in hand, where during the progress of the administration, he had no means from which the debt could have been paid. *In re Connolly's Estate*, 73 Mont. 35, 235 Pac. 408.

Cited in *Scott et al. v. Tuggle*, 74 Mont. 476, 483, 241 Pac. 229; *Mayger v. St. Louis Mining etc. Co.*, 68 Mont. 492, 500, 219 Pac. 1102.

For text treatment of this subject see vol. 11 Cal. Jur. 32, 37.

10285. Compensation of the executor and administrator.

The amendment of this section, made by chapter 55, L. 1919, goes no further than to expressly authorize the district court sitting in probate to do what under the section before amendment it could do only under its implied power, viz.: to fix the amount to be allowed to the personal representative of an estate as compensation for the services of an attorney in advance of the actual payment of the fee by him, and therefore under it the court has not the power on the petition of an attorney

to fix and allow to him directly the compensation due him from an administrator in his representative capacity, to be paid out of the funds of the estate as a legal claim against it. *In re McLure's Estate*, 68 Mont. 556, 220 Pac. 527.

Cited in *In re Jennings' Estate*, 74 Mont. 468, 473, 241 Pac. 655.

For text treatment of this subject see vol. 11 Cal. Jur. 1152-1156, 1187; vol. 12 Cal. Jur. 34, 109.

10287. Compensation of executors and administrators.

Whether an administrator is entitled to commissions as provided for by this section, is dependent upon whether he earned them, by attending to the duties of his trust with fidelity and in accordance with the provisions of the law; hence wilful neglect and mismanagement of the estate are sufficient to authorize the court in withholding them or such part of them as it may see fit to withhold in the exercise of the discretion

lodged in the court in that respect. *In re Jennings' Estate*, 74 Mont. 468, 241 Pac. 655.

Lien on, or outstanding interest in, property, as affecting computation of commissions of executors or administrators, note, 46 A. L. R. 239.

For text treatment of this subject see vol. 11 Cal. Jur. 1153, 1154, 1162, 1170; vol. 12 Cal. Jur. 261, 270.

CHAPTER 48.

ACCOUNTING AND SETTLEMENT BY EXECUTORS AND ADMINISTRATORS.

10288. Exhibit of receipts and disbursements and claims allowed.

Cited in *In re Jennings' Estate*, 74 Mont. 468, 472, 241 Pac. 655; *In re*

Jennings' Estate, 74 Mont. 449, 456, 241 Pac. 648.

10294. To render accounts at the expiration of term.

Cited in *In re Jennings' Estate*, 74 Mont. 449, 456, 241 Pac. 648.

10295. Citation of executors, etc., to account after discharge. When the authority of an executor, administrator or guardian ceases, or is revoked for any reason, he may be cited to account before the court or judge, at the instance of the person succeeding to the administration of the same estate, in like manner as he might have been cited by any person interested in the estate during the time he was executor, administrator or guardian. If an executor, administrator or guardian dies, his accounts may be presented by his personal representative to and settled by the court in which the estate of which he was executor, administrator or guardian is being administered, and upon the petition of the successor of such deceased executor, administrator or guardian, such court may compel the personal representative of such deceased executor, administrator or guardian to render an account of the administration of his testator, intestate or ward, and must settle such account as in other cases.

Amd. Sec. 1, Ch. 11, L. 1927.

An action at law to recover from an administrator and his surety a money judgment for assets in the hands of the former does not lie until after accounting and settlement had in the probate proceedings. *O'Sullivan v. Alexander et al.*, 73 Mont. 12, 234 Pac. 1099.

The district court sitting in probate has the same jurisdiction in the matter of issuing process, under this section and 10361, as has the district court; hence superior authority of the district court in that regard cannot be urged as a rea-

son for invoking its jurisdiction, rather than that of the probate court, in an action against an administrator who had removed from the state, and his surety, to recover assets of the estate prior to settlement of the former's account. *O'Sullivan v. Alexander et al.*, 73 Mont. 12, 234 Pac. 1099.

Cited in *Baker v. Hanson et al.*, 72 Mont. 22, 32, 231 Pac. 902.

For text treatment of this subject see vol. 11 Cal. Jur. 436.

10302. All matters may be contested by the heirs—Hearing.

Cited as section 7648, Revised Codes, in *In re Smith's Estate*, 60 Mont. 276, 295, 199 Pac. 696.

10303. Settlement of accounts to be conclusive, when and when not.

The rule that an order approving an administrator's final account is conclusive of all matters involved which might have been disputed at the hearing but were not has no application in an action by his successor against the sureties on his predecessor's bond to recover property of the estate fraudulently concealed by him, where no one interested in the estate prior to the time he presented his final report, knew of the existence of the property or that it belonged to the estate. *Baker v. Hanson et al.*, 72 Mont. 22, 231 Pac. 902.

An order settling an executor's account is not binding upon the court in considering his second account filed about a year

later, the provision of this section making settlement conclusive, having no application where the executor has been guilty of fraud. *In re Bradfield's Estate*, 69 Mont. 247, 221 Pac. 531.

Where a minor asks to have the accounts of the executrix previously approved reopened, the previous settlement is, under this section, prima facie evidence of the correctness of the account, and the burden rests upon him to prove that a certain item was erroneously allowed and approved. *In re Eakins' Estate*, 64 Mont. 84, 208 Pac. 956.

For text treatment of this subject see vol. 12 Cal. Jur. 62, 72.

10306. Moneys invested by order of court.

An executor or administrator who makes loans of estate funds without authority of court does so at the peril of being held liable for losses sustained by

the estate; whereas if the course prescribed by the statute is pursued he will be relieved of liability upon a showing that the loss was not occasioned by his own fault. *In re Connolly's Estate*, 73 Mont. 35, 235 Pac. 408.

Cited in *In re Bradford's Estate*, 69 Mont. 247, 258, 221 Pac. 531; *In re Eakins' Estate*, 64 Mont. 84, 92, 208 Pac. 956.

CHAPTER 49.

THE PAYMENT OF DEBTS OF THE ESTATE.

10307. Order in which debts to be paid.

Cited in *In re Jennings' Estate*, 74 Mont. 449, 458, 241 Pac. 648; *Nathan v. Freeman et al.*, 70 Mont. 259, 267, 41

A. L. R. 138, 225 Pac. 1015; *State ex rel. Rankin v. Yellowstone Bank etc. Co.*, 75 Mont. 43, 50, 243 Pac. 813.

10309. Estate insufficient, a dividend to be paid.

In the absence of statute regulating the manner in which a secured creditor of an insolvent state bank shall share in its general assets, held, that the rule prescribed by the Revised Codes for the computation of dividends from the general assets of the estate of a deceased insolvent must control, to wit: that the basis for computing dividends is the amount due the secured creditor,—after deducting any amounts he may have re-

ceived from his security subsequent to the closing of the bank,—at the time he presents his claim, and not the balance due at the time any particular dividend is distributed. *State ex rel. Rankin v. Yellowstone Bank etc. Co.*, 75 Mont. 43, 243 Pac. 813.

For text treatment of this subject see vol. 12 Cal. Jur. 97.

CHAPTER 50.

PARTITION AND DISTRIBUTION PRIOR TO FINAL SETTLEMENT OF ESTATE.

10318. Payment of legacies upon giving bond.

While an executor (or administrator) may resist an application for partial distribution, in the absence of statute permitting him to petition for such distribution, he has no right to do so, the right to so petition being only conferred upon heirs, devisees and legatees by this sec-

tion and section 10323, and the court was therefore without jurisdiction to entertain his petition. *In re Fratt's Estate*, 60 Mont. 526, 199 Pac. 711.

For text treatment of this subject see vol. 12 Cal. Jur. 138-143, 159.

10323. Application for distribution.

Under this section and 10327, relative to distribution of estates, failure of petitioners to serve nonappearing devisees with process does not deprive the court of jurisdiction to make the order of distribution, it being presumed, in the absence of any showing to the contrary, that the notice required by section 10330 to be given by posting or publication was caused to be given by the court or judge. *In re McGovern's Estate*, 77 Mont. 182, 250 Pac. 812.

Where, on a petition for partial distribution, it was shown that there were no debts, that due notice to creditors of the estate had been given, that the time during which claims should be filed or presented had expired, and that the estate had funds and securities amply suffi-

cient to cover a bequest to a niece in trust and the amount necessary to erect a building which the trustees were directed to construct on lots given her in trust, the lots, the amount of the bequest, and the amount needed to erect the building should have been set aside to the trustee, under this section. *In re Fratt's Estate*, 60 Mont. 526, 199 Pac. 711.

Applied with section 10318 as controlling the right of an executor to resist an application for partial distribution of an estate. *In re Fratt's Estate*, 60 Mont. 526, 199 Pac. 711.

For text treatment of this subject see vol. 12 Cal. Jur. 146, 149, 158-161.

CHAPTER 51.

DETERMINATION OF HEIRSHIP AND INTEREST IN THE ESTATE.

10324. Proceedings to determine heirship.

The district court has jurisdiction of an action against the administrator of an estate to compel specific performance of a contract of adoption entered into by his intestate; plaintiff in such an action claiming under the contract and adversely to the estate and not as an heir in privity with it, he is not required to proceed under sections 10324 to 10327, for the establishment of heirship. *Gravelin v. Porier et al.*, 77 Mont. 260, 250 Pac. 823.

Where there are no foreign heirs and where the persons entitled to share in an estate have been fully determined and there is no question raised as to their rights, the authority of the court to order distribution does not depend upon a prior determination of heirship under this section and 10325, but if the court should deem a proceeding for such determination necessary, it would not be warranted in dismissing the petition for distribution, but should suspend it until such determination could be had. *In re McGovern's Estate*, 77 Mont. 182, 250 Pac. 812.

Under the provision of this section, that a proceeding to determine heirship must be presented by petition, that where

the parties without filing a petition submitted the cause on an agreed statement of facts, the court did not acquire jurisdiction and its judgment therein was a nullity. *In re Spriggs' Estate*, 68 Mont. 92, 216 Pac. 1108.

While ordinarily proceedings to determine heirship under this section are not necessary as a condition precedent to the distribution of an estate, yet where a person claiming to be an heir is a resident of a foreign country, the court must, under section 10327, determine the question of heirship as provided in sections 10324-10326, before decreeing distribution. *State ex rel. Rubin v. District Court et al.*, 62 Mont. 60, 203 Pac. 860.

Where notice of the hearing of a petition for the distribution of an estate was not served upon an heir as required by this section, the decree rendered in the proceeding did not foreclose her rights as an heir. *State ex rel. Rubin v. District Court et al.*, 62 Mont. 60, 203 Pac. 860.

For text treatment of this subject see vol. 12 Cal. Jur. 123 et seq.

10325. Appearance of parties.

Under this section, an attorney claiming a right to appear in behalf of an heir at a proceeding to determine heirship must file written evidence of his authority to so appear, otherwise the heir is not barred from questioning the jurisdiction of the court to render the decree.

State ex rel. Rubin v. District Court et al., 62 Mont. 60, 203 Pac. 860.

Applied with section 10324 in *In re McGovern's Estate*, 77 Mont. 182, 250 Pac. 812.

For text treatment of this subject see vol. 12 Cal. Jur. 123 et seq.

CHAPTER 52.

FINAL DISTRIBUTION OF THE ESTATE—DISCHARGE OF EXECUTOR OR ADMINISTRATOR.

10327. Distribution of estate—How made and to whom.

The giving of notice of final distribution of an estate is jurisdictional; hence where a final decree of distribution has been set aside in an equity action for want of notice to one of the interested parties, entry of a corrected decree to conform to that rendered in the suit to set aside without notice was a nullity. *Hoppin v. Long*, 74 Mont. 558, 241 Pac. 636.

Where a person claiming to be an heir of an estate is a resident of a foreign country, the court must, under this sec-

tion, determine the question of heirship as provided in sections 10324-10326, before decreeing distribution. *State ex rel. Rubin v. District Court et al.*, 62 Mont. 60, 203 Pac. 860.

Applied with section 10323 in *In re McGovern's Estate*, 77 Mont. 182, 250 Pac. 812.

Cited in *Gravelin v. Porier et al.*, 77 Mont. 260, 275, 250 Pac. 823.

For text treatment of this subject see vol. 12 Cal. Jur. 166 et seq.

10328. Order of distribution, contents and finality of.

A decree of distribution while not strictly speaking a judgment is treated and reviewable as such and may be set aside if obtained by fraud. *Hoppin v. Long*, 74 Mont. 558, 241 Pac. 636.

Cited in *Town of Cascade v. County of*

Cascade, 75 Mont. 304, 312, 243 Pac. 806.

For text treatment of this subject see vol. 12 Cal. Jur. 186, 199 et seq.

10330. Decree to be made only after notice.

Cited in *In re McGovern's Estate*, 77 Mont. 182, 250 Pac. 812.

Cited in *Hoppin v. Long*, 74 Mont. 558, 573, 241 Pac. 636.

10332. Final settlement, order and discharge.

Cited in *State ex rel. Petters & Co. v. District Court*, 76 Mont. 143, 148, 245 Pac. 529.

CHAPTER 53.**PARTITION OF UNDIVIDED ESTATE AFTER DISTRIBUTION.****10334. Estate in common—Commissioners.**

That distribution of real property of an estate will result in loss and inconvenience to the devisees is of no concern to the executor, and the latter cannot defeat a petition for such distribution on the ground that for that reason a prior order of sale should stand, under this section and 10335, these sections being applicable only to action by the court

after distribution and at the instance of interested parties. In *re McGovern's Estate*, 77 Mont. 182, 250 Pac. 812.

Cited in *Hoppin v. Long*, 74 Mont. 558, 569, 241 Pac. 636.

For text treatment of this subject see vol. 12 Cal. Jur. 215.

CHAPTER 56.**MISCELLANEOUS — ORDERS — PROCESS — MINUTES — RECORDS — TRIALS AND APPEALS.****10359. Style of citation.**

Cited in *State ex rel. Kelly v. District Court et al.*, 73 Mont. 84, 90, 235 Pac. 751.

10361. Citation—How served.

The district court sitting in probate has the same jurisdiction in the matter of issuing process under this section and section 10295 as has the district court; hence superior authority of the district court in that regard cannot be urged as a reason for invoking its jurisdiction, rather than that of the probate court, in an action against an administrator who had removed from the state, and his

surety, to recover assets of the estate, prior to settlement of the former's account. *O'Sullivan v. Alexander et al.*, 73 Mont. 12, 234 Pac. 1099.

Sections 10361-10363 were cited in *State ex rel. Kelly v. District Court*, 73 Mont. 84, 90, 235 Pac. 751.

For text treatment of this subject see vol. 12 Cal. Jur. 314.

10365. Rules of practice generally.

Cited in *In re Spriggs' Estate*, 68 Mont. 92, 95, 216 Pac. 1108.

10366. New trials and appeals.

This and sections 10368, 10369, were cited as sections 7712, 7714, 7715, Revised

Codes, in *In re Stinger Estate*, 61 Mont. 173, 184, 201 Pac. 693.

10369. Court to try case when no jury demanded—How and what issues to be tried.

Where objectors to the allowance of an attorney's fee for services rendered as administrator did not demand a jury trial (sec. 10369), they were in no position to complain on appeal that the court tried the cause without a jury. In re

McLure's Estate, 68 Mont. 556, 220 Pac. 527.

For text treatment of this subject see vol. 12 Cal. Jur. 319, 321-325.

10370. Court to appoint attorney for minor or absent heirs, devisees or legatees or creditors—When and what compensation he is to receive.

Cited in Hoppin v. Long, 74 Mont. 558, 574, 241 Pac. 636.

CHAPTER 57.

INHERITANCE TAX.

10377 to 10400 inclusive. Relating to inheritance taxes.

The above sections comprised the Inheritance Tax Law enacted as Ch. 14, Ex. L. 1921. They were repealed by Sec. 26, Ch. 65, L. 1923.

For text treatment of this subject see vol. 24 Cal. Jur. 416.

Where a transfer of property is not to take effect in possession or enjoyment until after the death of the transferor, whether made in contemplation of death or not, it is subject to the inheritance tax. In re Estate of Schuh, 66 Mont. 50, 212 Pac. 516.

An agreement between decedent and her heirs for the establishment of a trust with relation to her personal property and the one creating the trust, under which the income was to be paid to her during her lifetime, executed contemporaneously, and the one dependent upon the other, must be construed together in determining whether the property was subject to an inheritance tax. In re Estate of Schuh, 66 Mont. 50, 212 Pac. 516.

Under the Inheritance Tax Law of 1921 before amendment it was held that in the absence of a provision fixing the rate of tax on property in excess of \$25,000

where the beneficiary belongs to the first class mentioned in section 2, a widow who took property by will in excess of that amount was not liable for any tax on such excess, and was required to pay no more than one per cent on \$15,000, the amount remaining after the deduction of \$10,000, the exemption allowed a widow by the act. State ex rel. Murray v. Walker, 64 Mont. 215, 210 Pac. 90.

Since inheritance taxes are not imposed upon the property which passes by will or succession, but upon the privilege of so taking, and a person cannot be taxed for more than he receives, where property was left to a niece for life, the remainder to go to her lineal descendants if she left any, and if not, to others named, thus leaving it indeterminable in whom or when the remainder of the estate would vest, the remainder interests were not taxable to her, and she was only liable for the tax based upon the value of her life estate. In re Fratt's Estate, 60 Mont. 526, 199 Pac. 711.

Sections 10377-10400 were cited in State ex rel. Rankin v. District Court, 70 Mont. 322, 324, 225 Pac. 804.

10377.1. How and when imposed. A tax shall be and is hereby imposed upon any transfer of property, real, personal or mixed, or any interest therein, or income therefrom in trust or otherwise, to any person, association or corporation except the state of Montana, or any of its institutions, county, town or municipal corporations within the state, for strictly county, town, municipal or other public purposes, and corporations of this state organized under its laws, or voluntary associations, organized solely for religious, charitable, or educational purposes, which shall use the property so transferred exclusively for the purposes of their organization, within the state, in the following cases, except as hereinafter provided:

(1) *By a resident of state.* When the transfer is by will or by intestate laws of this state from any person dying possessed of the property while a resident of the state.

(2) *Nonresident's property within state.* When a transfer is by will or intestate law, of property within the state or within its jurisdiction and the decedent was a nonresident of the state at the time of his death.

(3) *In contemplation of death.* When the transfer is of property made by a resident or by a nonresident when such nonresident's property is within the state, or within its jurisdiction, by deed, grant, bargain, sale or gift, made in contemplation of the death of the grantor, vendor, or donor, or intended to take effect in possession or enjoyment at or after such death. Every transfer by deed, grant, bargain, sale or gift, made within two (2) years prior to the death of the grantor, vendor or donor, of a material part of his estate, or in the nature of a final disposition or distribution thereof, and without a fair consideration in money or moneys worth shall, unless shown to the contrary, be deemed to have been made in contemplation of death within the meaning of this section.

(4) *When imposed.* Such tax shall be imposed when any such person or corporation becomes beneficially entitled, in possession or expectancy, to any property or the income thereof, by any such transfer whether made before or after the passage of this act; provided that the provisions of this act shall apply to all estates of all decedents who have died since the first day of April, 1921, and which estates remain undistributed on the date when this act takes effect, to the same extent and in the same manner as though this act had been in full force and effect at the dates of death of such decedents, and if any tax shall have been paid by any executor, administrator, heir, legatee or devisee of any such decedent before the date when this act takes effect, the amount of such tax so paid shall be allowed as a credit on the total amount of tax required to be paid by such executor, administrator, heir, legatee, or devisee under the provisions of this act.

(5) *Transfer under power of appointment.* Whenever any person or corporation shall exercise a power of appointment derived from any disposition of property, made either before or after the passage of this act, such appointment, when made, shall be deemed a transfer taxable under the provisions of this act, in the same manner as though the property to which such appointment relates belonged absolutely to the donee of such power, and had been bequeathed or devised by such donee by will; and whenever any person or corporation possessing such a power of appointment so derived shall omit or fail to exercise the same within the time provided therefor, in whole, or in part, a transfer taxable under the provisions of this act, shall be deemed to take place to the extent of such omission or failure, in the same manner as though the persons or corporations thereby becoming entitled to the possession or enjoyment of the property to which such power related, had succeeded thereto by a will of the donee of the power failing to exercise such power, taking effect at the time of such omission or failure.

(6) *Joint estates.* Whenever, any property, real or personal, is held in the joint names of two (2) or more persons, or as tenants by the

entirety, or is deposited in banks or other institutions or depositaries in the joint names of two (2) or more persons and payable to either or the survivor upon the death of one (1) of such persons, the right of the surviving tenant by the entirety, joint tenant, or joint tenants, person or persons, to the immediate ownership or possession of such property shall be deemed a transfer of one-half ($\frac{1}{2}$) or other proper fraction thereof as though the property to which such transfer relates belonged to the tenants by the entirety, joint tenants, or joint depositors as tenants in common, and had been bequeathed or devised to the surviving tenant by the entirety, joint tenant, or joint tenants, person or persons, by such deceased tenant by the entirety, joint tenant, or joint depositor, by will, except such part thereof as may be shown to have originally belonged to the survivor and never to have belonged to the decedent.

(7) *Insurance part of estate.* All insurance payable upon the death of any person over and above fifty thousand dollars (\$50,000), shall be deemed a part of the property and estate passing to the person or persons entitled to receive the same and if payable to more than one (1) person the said fifty thousand dollars (\$50,000) exemption shall be prorated between such persons in proportion to the amount of insurance payable to each.

(8) *On clear market value.* The tax so imposed shall be upon the clear market value of such property passing by any such transfer to each person, institution, association, corporation, or body politic, at the rates hereinafter prescribed and only upon the excess of the exemption hereinafter granted to such person, institution, association, corporation or body politic, and in determining the clear market value of the property so passing by any such transfer the following deductions, and no other shall be allowed; debts of the decedent owing at the date of death, expenses of funeral and last illness, all state, county and municipal taxes which are fixed in amount and owing by the decedent at date of death, and the ordinary expenses of administration, including the commissions and fees of executors and administrators and their attorneys actually allowed and paid, but no deduction shall be made for any federal estate inheritance or transfer taxes paid to the United States.

En. Sec. 1, Ch. 65, L. 1923; Amd. Sec. 1, Ch. 150, L. 1925; Amd. Sec. 1, Ch. 105, L. 1927.

Under this section, before amendment, that where a transfer or gift is not to take effect in possession or enjoyment until after the death of the transferor or donor, whether made in contemplation of death or not, it is subject to the inheritance tax therein provided for. Estate of Oppenheimer, 75 Mont. 186, 243 Pac. 589.

Where under an antenuptial agreement certain sums of money were to be paid to the wife after the death of the husband in certain annual installments by his executors, in consideration of her relinquishment of her right of dower and any other claims she might be entitled to assert against his estate as his widow or next of kin, the total amount of such

gifts was subject to the inheritance tax provided for by this section. Estate of Oppenheimer, 75 Mont. 186, 243 Pac. 589.

Under this act, providing for a tax on direct and collateral inheritances, the state may not lawfully collect an inheritance tax upon the right of a nonresident legatee to succeed to shares of the capital stock of a foreign corporation doing business in the state, bequeathed to him by a nonresident, where the certificates representing the stock are kept at the place of domicile of the testator. State ex rel. Bankers' Trust Co. v. Walker, 70 Mont. 484, 226 Pac. 894.

This act, imposing an inheritance tax upon all estates of persons who died since April 1, 1921, remaining undistributed on the date of its approval, March 5, 1923, is a valid enactment and not open to attack on the grounds that

it violates the equal protection of the law clause of the constitution, is class legislation and authorizes the taking of prop-

erty without due process of law. State ex rel. Rankin v. District Court, 70 Mont. 322, 225 Pac. 804.

10377.2. Primary rates, where not in excess of \$25,000. When the property or any beneficial interest therein passes by any such transfer to any person, institution, association, corporation or body politic, where the amount of the property shall exceed in value the exemption herein-after specified, and shall not exceed in value twenty-five thousand dollars, the tax hereby imposed shall be:

(1) *One per cent.* Where the person or persons entitled to any beneficial interest in such property shall be the husband, wife, lineal issue, lineal ancestor of the decedent or any child adopted as such in conformity with law, or any child to whom such decedent for not less than ten years prior to such transfer stood in the mutually acknowledged relation of a parent, provided however, such relationship began at or before the child's fifteenth birthday, and was continuous for ten years, or any lineal issue of such adopted or mutually acknowledged child, at the rate of one per cent of the clear value of such interest in such property passing to such person.

(2) *Two per cent.* Where the person or persons entitled to any beneficial interest in such property shall be the brother or sister or a descendant of a brother or sister of the decedent, a wife of a son, or the husband of a daughter of the decedent, at the rate of two per cent of the clear value of such interest in such property passing to such person.

(3) *Three per cent.* Where the person or persons entitled to any beneficial interest in such property shall be the uncle, aunt, or first cousin of the decedent, at the rate of three per cent of the clear value of such interest in such property passing to such person.

(4) *Four per cent.* Where the person or persons entitled to any beneficial interest in such property shall be in any other degree of collateral consanguinity than is hereinbefore stated, or shall be a stranger in blood to the decedent, or shall be a body politic or corporate, at the rate of four per cent of the clear value of such interest in such property passing to such person, institution, association, corporation or body politic.

En. Sec. 2, Ch. 65, L. 1923.

10377.3. Other rates, where in excess of \$25,000. The foregoing rates in section 2 are for convenience termed the primary rates:

When the amount of the clear value of such property or interests exceeds twenty-five thousand dollars (\$25,000), the rates of tax upon such excess shall be as follows:

(1) *Rate where amount \$25,000 to \$50,000.* Upon all in excess of twenty-five thousand dollars (\$25,000) and up to fifty thousand dollars (\$50,000), two (2) times the primary rates.

(2) *Rate where amount \$50,000 to \$100,000.* Upon all in excess of fifty thousand dollars (\$50,000) and up to one hundred thousand dollars (\$100,000), three (3) times the primary rates.

(3) *Rate where amount over \$100,000.* Upon all in excess of one hundred thousand dollars (\$100,000), four (4) times the primary rates.

(4) When the net value of the estate of decedent subject to tax under the laws of this state exceeds the sum of one million dollars (\$1,000,000) the tax, in addition to that imposed by the foregoing subdivisions of this section, shall be an amount equal to the sum of the following percentages of the value of the net estate, regardless of the relationship of the beneficiaries to the decedent and regardless of the value of the estate passing to each beneficiary:

(a) Six and two-fifths per cent ($6\frac{2}{5}\%$) of the amount by which the net estate exceeds one million dollars (\$1,000,000) but does not exceed one million five hundred thousand dollars (\$1,500,000);

(b) Seven and one-fifth per cent ($7\frac{1}{5}\%$) of the amount by which the net estate exceeds one million five hundred thousand dollars (\$1,500,000) and does not exceed two million dollars (\$2,000,000);

(c) Eight per cent (8%) of the amount by which the net estate exceeds two million dollars (\$2,000,000) and does not exceed two million five hundred thousand dollars (\$2,500,000);

(d) Eight and four-fifths per cent ($8\frac{4}{5}\%$) of the amount by which the net estate exceeds two million five hundred thousand dollars (\$2,500,000) and does not exceed three million dollars (\$3,000,000);

(e) Nine and three-fifths per cent ($9\frac{3}{5}\%$) of the amount by which the net estate exceeds three million dollars (\$3,000,000) and does not exceed three million five hundred thousand dollars (\$3,500,000);

(f) Ten and two-fifths per cent ($10\frac{2}{5}\%$) of the amount by which the net estate exceeds three million five hundred thousand dollars (\$3,500,000) and does not exceed four million dollars (\$4,000,000);

(g) Eleven and one-fifth per cent ($11\frac{1}{5}\%$) of the amount by which the net estate exceeds four million dollars (\$4,000,000) and does not exceed five million dollars (\$5,000,000);

(h) Twelve per cent (12%) of the amount by which the net estate exceeds five million dollars (\$5,000,000) and does not exceed six million dollars (\$6,000,000);

(i) Twelve and four-fifths ($12\frac{4}{5}\%$) of the amount by which the net estate exceeds six million dollars (\$6,000,000) and does not exceed seven million dollars (\$7,000,000);

(j) Thirteen and three-fifths per cent ($13\frac{3}{5}\%$) of the amount by which the net estate exceeds seven million dollars (\$7,000,000) and does not exceed eight million dollars (\$8,000,000);

(k) Fourteen and two-fifths per cent ($14\frac{2}{5}\%$) of the amount by which the net estate exceeds eight million dollars (\$8,000,000) and does not exceed nine million dollars (\$9,000,000);

(l) Fifteen and one-fifth per cent ($15\frac{1}{5}\%$) of the amount by which the net estate exceeds nine million dollars (\$9,000,000) and does not exceed ten million dollars (\$10,000,000);

(m) Sixteen per cent (16%) of the amount by which the net estate exceeds ten million dollars (\$10,000,000).

The tax imposed by subdivision 4 of this section shall be credited with the amount of any estate, inheritance, legacy, or succession taxes actually paid to any state or territory of the United States, or the District of Columbia, including any and all taxes imposed under and by virtue of the first three subdivisions of this section, and including any

and all taxes imposed by other statutory provisions imposing an inheritance tax in this state, in respect of any property included in the gross estate which is subject to an inheritance or estate tax in the state of Montana. In no event shall the tax payable under subdivision 4 of this section exceed the amount, if any, by which the maximum credit allowable to the estate against the United States estate tax, exceeds the credits provided for in the preceding sentence of this section.

En. Sec. 3, Ch. 65, L. 1923; Amd. Sec. 1, Ch. 141, L. 1927.

10377.4. Exemptions from first \$25,000. The following exemptions from the tax are hereby allowed the exemption allowed to each person, institution, association, corporation and body politic to be taken out of the first twenty-five thousand dollars passing by any such transfer to such person, institution, association, corporation or body politic.

(1) *Transfers totally exempt.* All property transferred to the state or any of its institutions, or to municipal corporations within the state for strictly county, city, town, or municipal purposes, or to corporations or voluntary associations of this state organized under its laws solely for religious, charitable, educational or other public purposes, which shall use the property so transferred exclusively for the purpose of their organization within the state, shall be exempt.

(2) *\$17,500; \$5,000; \$2,000 exempt, when.* Property of the clear value of seventeen thousand five hundred dollars, transferred to the wife, or five thousand dollars transferred to the husband of the decedent, and two thousand dollars transferred to each of the other persons described in the first subdivision of section 2 shall be exempt. Such exemption to the widow shall include all her statutory dower and other allowances. Any child of the decedent shall be entitled to credit for so much of the tax paid by the widow as applied to any property which shall thereafter be transferred by or from such widow to any such child, provided the widow does not survive said decedent to exceed ten years.

(3) *\$500 exempt, when.* Property of the clear value of five hundred dollars transferred to each of the persons described in the second subdivision of section 2 shall be exempt.

(4) *Property without the state exempt, when.* No tax shall be imposed upon any tangible personal property of a resident decedent when such property is located without this state, and when the transfer of such property is subject to an inheritance or transfer tax in the state where located and which tax has actually been paid, secured or guaranteed, provided such property is not without this state temporarily nor for the sole purpose of deposit or safekeeping; and provided the laws of the state where such property is located allow a like exemption in relation to such property left by a resident of that state and located in this state.

En. Sec. 4, Ch. 65, L. 1923.

Cited in State ex rel. Rankin v. District Court, 70 Mont. 322, 326, 225 Pac. 80.

10377.5. (1) Tax when due—Lien—Liability. All taxes imposed by this act shall be due and payable at the time of the death of the decedent, except as hereinafter provided; and every such tax shall be and remain a lien upon the property transferred until paid, and the person

to whom the property is transferred and the administrators, executors, and trustees of every estate so transferred shall be personally liable for such tax until its payment.

(2) *County treasurer's receipt.* The tax shall be paid to the state treasurer or to the treasurer of the county in which the district court is situated having jurisdiction as herein provided, and if paid to the county treasurer said treasurer shall make triplicate receipts of such payment, one of which he shall immediately send to the state treasurer, whose duty it shall be to charge the county treasurer so receiving the tax, with the amount thereof, and the other receipt shall be delivered to the executor, administrator, or trustee, whereupon it shall be a proper voucher in the settlement of his accounts. One he shall keep on file in his office.

(3) *Final accounting on filing receipt.* No executor, administrator, or trustee shall be entitled to a final accounting of an estate, in settlement of which a tax is due under the provisions of this act, unless he shall produce such receipt or a certified copy thereof or unless a bond shall have been filed as prescribed by section 8.

En. Sec. 5, Ch. 65, L. 1923.

10377.6. Discount—Interest. If such tax is paid within eighteen months from the accruing thereof, a discount of five per cent shall be allowed and deducted therefrom. If such tax is not paid within eighteen months from the accruing thereof, interest shall be charged and collected thereon at the rate of ten per cent per annum from the time the tax accrued; unless by reason of claims made upon the estate, necessary litigation or other unavoidable cause of delay, such tax shall not be determined and paid as herein provided, in which case interest at the rate of six per cent shall be charged upon such tax from the accrual thereof until the cause of such delay is removed, after which ten per cent shall be charged, provided that litigation to defeat the payment of the tax shall not be considered necessary litigation. In all cases when a bond shall be given under the provisions of section 9, interest shall be charged at the rate of six per cent after one year from the date of death, until the date of payment thereof.

En. Sec. 6, Ch. 65, L. 1923.

10377.7. Executors—Powers—Collection and payment. Every executor, administrator or trustee shall have full power to sell so much of the property of the decedent as will enable him to pay such tax in the same manner as he might be entitled by law to do for the payment of the debts of the testator or intestate. Any such administrator, executor, or trustee, having in charge or in trust any legacy or property for distribution, subject to such tax, shall deduct the tax therefrom; and within thirty days therefrom shall pay over the same to the county treasurer, as herein provided. If such legacy or property be not in money, he shall collect the tax thereon upon the appraised value thereof, from the person entitled thereto. He shall not deliver or be compelled to deliver any specific legacy or property subject to tax under this law, to any person until he shall have collected the tax thereon. If any such

legacy shall be charged upon or payable out of real property, the heir or devisee shall deduct such tax therefrom and pay it to the administrator, executor, or trustee and the tax shall remain a lien or charge on such real property until paid, and the payment thereof shall be enforced by the executor, administrator, or trustee in the same manner that payment of the legacy might be enforced, or by the attorney general under section 16 of this act. If any such legacy shall be given in money to any such person for a limited period, the administrator, executor, or trustee shall retain the tax upon the whole amount, but if it be not in money, he shall make application to the court having jurisdiction of an accounting by him to make an apportionment if the case require it, of the sum to be paid into the hands of such legatees, and for such further order relative thereto as the case may require.

En. Sec. 7, Ch. 65, L. 1923.

10377.8. (1) Refunding tax. If any debt shall be proved against the estate of the decedent, after the payment of any legacy or distributive share thereof, from which any such tax has been deducted, or upon which it has been paid by the person entitled to such legacy or distributive share and such person is required by the order of the district court having jurisdiction of the tax so deducted or paid, to refund the amount of such debts or any part thereof, an equitable proportion thereof shall be repaid to such person by the executor, administrator or trustee, if the said tax has not been paid to the county treasurer or state treasurer, or by them, in the proper proportionate shares, if it has been so paid.

(2) *How refund of tax made.* When any amount of said tax shall have been paid erroneously to the county and state treasurer, or to either of them, it shall be lawful for them, on satisfactory proof to the state board of equalization of such erroneous payment, to refund to the executor, administrator, person or persons who shall have paid any such tax in error, the county's and state's proportionate amount of such tax so paid; provided that all such applications for refund shall be made within two (2) years from the date of such payment.

(3) *Advance payment of tax.* Any person from whom any such tax is or may be due may make an estimate of and pay the same to the county treasurer, who shall receipt therefor, at any time before the same is determined by the court, and shall thereupon be relieved from any interest or penalty upon the amount so paid in the same manner as if the tax were then determined. Any excess so paid shall be refunded to the person so paying or entitled thereto by such treasurer out of any inheritance tax money in his possession, or by the state treasurer when the county treasurer is without such money, upon filing with such treasurer a copy of the order fixing such tax, and attached thereto a certificate of the judge stating the amount of refund due.

En. Sec. 8, Ch. 65, L. 1923.

10377.9. Bond for payment of deferred tax. Any beneficiary of any property chargeable with a tax under this act, and any executors, administrators and trustees thereof, may elect, within eighteen months from the date of the death of decedent or transfer thereof as herein pro-

vided, not to pay such tax until the person or persons beneficially interested therein shall come into the actual possession or enjoyment thereof. The person or persons so electing shall give a bond to the state in a penalty of three times the amount of any such tax, with such sureties as the district court of the proper county or the state board of equalization, as the case may be, may approve, conditioned for the payment of such tax and interest thereon, at such time or period as the person or persons beneficially interested therein may come into the actual possession or enjoyment of such property, which bond shall be filed in the district court, or in the office of the state treasurer as the case may be. Such bond must be executed and filed and a full return of such property upon oath made to the district court within eighteen months from the date of the death of decedent or transfer as herein provided, and such bond must be renewed, every five years, and said deferred tax shall bear interest at 6% (per cent) per annum after such eighteen months.

En. Sec. 9, Ch. 65, L. 1923.

10377.10. Bequests to executors for services. If a testator bequeaths property to one or more executors or trustees in lieu of their commissions or allowances, or makes them his legatees to an amount exceeding the commissions or allowances prescribed by law for an executor or trustee, the excess in value of the property so bequeathed, above the amount of commissions or allowances prescribed by law in similar cases, shall be taxable by this act.

En. Sec. 10, Ch. 65, L. 1923.

10377.11. (1) Transfer of stock by foreign executors. If a foreign executor, administrator, or trustee shall assign or transfer any stock or obligations in this state, or within the jurisdiction of this state standing in the name of a decedent or in trust for a decedent, liable to any such tax, the tax shall be paid to the treasurer of the proper county or the state treasurer on the transfer thereof; otherwise the corporation permitting such transfer shall become liable to pay such tax.

(2) *Nonresident decedent—Notice of transfer—Order of court.* No safe deposit company, bank, or other institution, person or persons, holding securities or assets of a nonresident decedent, nor any corporation organized under the laws of this state, in which a nonresident decedent held stock at his decease, shall deliver or transfer the same to the executors, administrators or legal representatives of said decedent, or upon their order or request, unless notice of the time and place of such intended transfer be served upon the state board of equalization at least ten (10) days prior to the said transfer; nor shall any such safe deposit company, bank, or other institution, person or persons, nor any corporation, deliver or transfer any securities or assets of the estate of a nonresident decedent without retaining a sufficient portion or amount thereof to pay any tax which may thereafter be assessed on account of the transfer of such securities or assets under the provisions of the inheritance tax laws without an order from the proper court authorizing such transfer; and it shall be lawful for the state board of equalization, personally

or by representative, to examine said securities or assets at any time before such delivery or transfer. Failure to serve such notice or to allow such examination or to retain a sufficient portion or amount to pay such tax as herein provided, shall render said safe deposit company, trust company, bank, or other institution, person or persons, or such corporation, liable to the payment of the tax due upon said securities or assets in pursuance of the provisions of the inheritance tax laws. The state board of equalization may issue a certificate authorizing the transfer of any such stock, securities or assets whenever it appears to the satisfaction of the said board that no tax is due thereon.

(3) *Debts, exemptions, etc., to be apportioned.* Whenever a tax may be due from the estate, or the beneficiaries therein, of any resident or nonresident decedent upon the transfer of any property, when the property or the estate left by such decedent is partly within and partly without this state, or upon any stocks, bonds, mortgages, or other securities representing property or estate partly within and partly without this state, any beneficiary of such estate shall be entitled to deduct only his proper proportion of that portion of the total debts and expenses of administration which the gross estate in Montana or within its jurisdiction bears to the gross estate both within and without this state, but no deduction shall be made for any federal estate inheritance succession or transfer taxes paid to the United States.

(4) *Information to board—Retaining amount of tax.* The state board of equalization shall require such reports and information and shall make such orders, rules, and regulations as it may deem necessary to enable the said board to secure the necessary information from domestic corporations, and to ascertain the amount of and collect such tax; and no holding company or other corporation subject to the provisions of this section shall deliver or transfer any such stocks, bonds, mortgages, or other securities of a Montana corporation without retaining a sufficient portion thereof to pay any tax which may thereafter be assessed under the provisions of this act on account of such transfer, except upon order of the proper court or a certificate of consent of the state board of equalization.

(5) *Penalties.* Any corporation or holding company violating the provisions of this section shall be liable to the state for the amount of the tax together with a penalty of ten per cent (10%) thereof.

En. Sec. 11, Ch. 65, L. 1923; Amd. Sec. 2, Ch. 150, L. 1925; Amd. Sec. 2, Ch. 105, L. 1927. Cited in State ex rel. Bankers' Trust Co. v. Walker, 70 Mont. 484, 236 Pac. 984.

10377.11A. Limitation of act—Payment of tax. This act is hereby expressly declared to be retroactive and shall apply to all estates where the decedent died on or after the first day of June, 1924, and which estates remain undistributed on the date when this act is passed and approved, provided that as to any such estate the tax imposed by authority of this section shall not exceed the amount for which credit is finally allowed to such estate by the United States upon the federal estate tax for taxes due or paid the state of Montana and provided, further that any tax collected by authority of this section shall be kept

separate from other inheritance taxes collected until the amount of such credit is finally determined and shall in accordance with section 8 of chapter 65, Session Laws of Montana of 1923, be refunded to the person or estate paying the same if and to the extent that credit therefor shall not be allowed by the United States upon such federal estate tax. If any tax shall have been paid by any executor, administrator, heir, legatee, or devisee of any such decedent before the date when this act takes effect the amount of such tax so paid shall be allowed as a credit on the total amount of tax required to be paid by such executor, administrator, heir, legatee, or devisee under the provisions of this act.

En. Sec. 3, Ch. 105, L. 1927.

10377.11B. Effect partial invalidity act. If any section, sentence, clause, phrase or part of this act is for any reason held to be unconstitutional or inoperative, such decision shall not affect the validity of the remaining portions of this act.

En. Sec. 4, Ch. 105, L. 1927.

10377.12. District courts—Jurisdiction. The district court of every county of the state having jurisdiction to grant letters testamentary or of administration upon the estate of a decedent whose property is chargeable with any tax under the inheritance tax laws, or to appoint a trustee of such estate or any part thereof, or to give ancillary letters thereon, shall have jurisdiction to hear and determine all questions arising under the provisions of the inheritance tax laws, and to do any act in relation thereto authorized by law to be done by a district court in other matters or proceedings coming within its jurisdiction; and if two or more district courts shall be entitled to exercise any such jurisdiction, the district court first acquiring jurisdiction hereunder, shall retain the same to the exclusion of every other district court.

Before decree of distribution in any estate shall be issued by the district judge, or the issuance of an order discharging the executor, administrator or trustee of any estate, there shall be filed with the clerk of the district court a certificate signed by the state board of equalization stating that the amount of inheritance tax determined to be due to the state of Montana, as appearing in the order of the court determining tax, has been properly computed, or if no tax is due such certificate shall so state.

(2) *Petition for ancillary letters.* Every petition for ancillary letters testamentary or of administration shall include the state board of equalization as a person to be notified, and a true and correct statement of all the decedent's property in this state with the value thereof; upon presentation thereof the district court shall cause the order for hearing to be served upon the said board; and upon the hearing the district court shall determine the amount of the inheritance tax which may be or become due and the decree awarding the letters may contain provisions for the payment of such tax or giving of security thereof.

(3) *Determination by state board of equalization.* Any personal representative, trustee, heir, devisee or legatee of a nonresident decedent leaving no estate requiring administration in this state, desiring to trans-

fer any stocks, bonds, mortgages or other securities, or other personal property in this state or within the jurisdiction of this state, may make application to the state board of equalization for the determination whether there is any tax due upon account of the transfer thereof, and the amount of any such tax, and such applicant shall furnish to the state board of equalization therewith, an affidavit setting forth a description and statement of the property owned by the decedent situated within this state, or within its jurisdiction at the time of his death, the true value of said property at the time of decedent's death; a description and statement of the true value of all property owned by the decedent at the time of his death situated outside of this state, and without its jurisdiction; and containing a schedule or statement of all valid claims against the estate of the decedent, including the expenses of his last illness, funeral expenses and expenses of administering his estate. Such applicant shall also, at the same time, furnish the state board of equalization with a certified copy of the last will of the decedent, in case he died testate, or an affidavit setting forth the names, ages, and residence of the heirs at law of decedent in case he died intestate, and the proportion of the entire estate of said decedent inherited by each of said persons, and the relation, if any, which each legatee, devisee, heir, or transferee sustained to the decedent, or person from whom the transfer was made. Such affidavit shall be subscribed and sworn to by the personal representative of the decedent, or some other person having knowledge of the facts therein set forth.

The statement contained in any affidavits, statements or schedules as to values, or otherwise, shall not be binding upon the state board of equalization in case they believe the same to be erroneous or untrue. From the information so furnished them and such other information as they may be able to obtain with reference thereto, the state board of equalization shall, with reasonable diligence, proceed to ascertain and determine the amount of tax, if any, due under the provisions of this act, and notify the person making the application of the amount of the tax so ascertained and determined to be due; or in case there is no tax to be paid, the state board of equalization shall issue a consent to the transfer of the property so owned by the decedent.

Any person aggrieved by the determination of the state board of equalization in any matter herein provided for in this subdivision, may, within thirty (30) days thereafter, appeal to the district court of Lewis and Clark county, by serving on the state board of equalization a notice in writing setting forth his objections to such determination, and by filing such notice, after so serving the same, in the office of the clerk of such court, and thereupon, and within ten (10) days after the service of such notice on them the state board of equalization shall transmit full and complete copies of all original papers and records which have been filed with them in relation to such application, to the clerk of said district court, and thereupon the said district court shall have jurisdiction of such application and proceeding. Upon ten days' notice given by either the applicant or the state board of equalization, the matter may be brought on for hearing and determination by said court, either in term time or in

vacation, at a general or special term of court, or at chambers, as may be directed by the order of the court.

(4) *Nonresident estates — Jurisdiction.* Whenever any nonresident decedent, leaving no estate requiring administration in this state, shall leave any stocks, bonds, mortgages, or other securities, or other personal property within the state or within the jurisdiction thereof, and no personal representative, trustee, heir, devisee, or legatee of such nonresident decedent has made application to the state board of equalization for the determination as to whether there is any tax due for the transfer thereof and the amount of such tax, if any, the state board of equalization, upon such matter being called to its attention, shall make an order, and cause a copy thereof to be served upon the personal representative, trustee, heirs, devisees, or legatees of such nonresident decedent, ordering and directing that a statement and return, under oath, containing the statements and information prescribed in subdivision 3 of this section, be filed with such board within sixty (60) days from the date of such order, or within such further time as the state board of equalization may grant therefor; and if such statement is not filed with the state board of equalization within such time the state board of equalization may then procure such information in any manner it may deem advisable. Upon the filing of such statement, or the procuring of such information by the state board of equalization in the event of a failure to file the same in compliance with such order, the state board of equalization shall proceed in the same manner as prescribed by subdivision 3 of this section, and all provisions thereof with reference to hearings and appeals shall be applicable thereto.

En. Sec. 12, Ch. 65, L. 1923; Amd. Sec. 3, Ch. 150, L. 1925.

10377.13. Special appraiser. The district court, upon the application of any interested party, including the state board of equalization, shall appoint a competent person as special appraiser to fix the fair market value at the time of the transfer thereof of the property of persons whose estate shall be subject to the payment of any tax imposed by this act.

En. Sec. 13, Ch. 65, L. 1923; Amd. Sec. 2, Ch. 141, L. 1927.

10377.14. Special appraiser—Duties—Powers—Compensation. Every such appraiser shall forthwith give notice by mail to all persons known to have a claim or interest in the property to be appraised, including the state board of equalization, and to such persons as the district court may by order direct, of the time and place when he will appraise such property. He shall, at such time and place, appraise the same at its fair market value, as herein prescribed; and for that purpose the said appraiser is authorized to issue subpoenas and to compel the attendance of witnesses before him and to take the evidence of such witnesses under oath concerning such property and the value thereof; and he shall make report thereof and of such value in writing, to the said district court, together with the depositions of the witnesses examined, and such other facts in relation thereto and to the said matter as the said district court may order or require. Every appraiser shall be paid on the certificate of the district court at the rate of not to exceed ten dollars (\$10) per day for every day actually and necessarily employed in such appraisal, and

shall receive his actual and necessary traveling expenses, and witnesses shall be allowed the same fees as are allowed witnesses in civil actions in courts of record and the same shall be paid by the executor, administrator or trustee of such estate in the same manner as provided for the payment of other administration expenses.

En. Sec. 14, Ch. 65, L. 1923; Amd. Sec. 4, Ch. 150, L. 1925.

10377.15. (1) **Hearing by the court.** The report of the special appraiser shall be made in triplicate, and not less than ten (10) days before the hearing thereon one of said triplicates shall be filed in the office of the district court, one to the administrator or the executor, and the other shall be mailed to the state board of equalization. At the time and place of hearing the administration account the district court shall examine such report, and from the report and other proofs relating to any such estate shall forthwith determine the cash value of such estate and the amount of tax to which the same is liable; or, the district court without appointing such appraiser may at the time so fixed hear the evidence and determine the cash value of such estate and the amount of tax to which the same is liable.

(2) *Notice of hearing.* Notice of such hearing to determine the inheritance tax shall be given in the same manner and may be included in the notice of hearing the administration account as provided by law. Notice in writing of such hearing shall be mailed to the state board of equalization not less than ten (10) days before such hearing upon such blanks and containing such information as the state board of equalization may provide.

(3) *Commissioner of insurance to value future estates, etc.* The commissioner of insurance shall, on application of any district court or of the state board of equalization, determine the value of any such future or contingent estates, income, or interests therein limited, contingent, dependent, or determinable upon the life or lives of the person or persons in being, upon the facts contained in the district court's finding and determination and contained in such special appraiser's report, and upon the facts certify the same to the district court or to the state board of equalization, and his certificate shall be presumptive evidence that the method of computation adopted therein is correct.

(4) *Appraisal at clear market value—Annuities, how computed.* Whenever a transfer of property is made upon which there is, or in any contingency there may be, a tax imposed, such property shall be appraised at its clear market value immediately upon the transfer or as soon thereafter as practicable. The value of every future or limited estate, income, interest, or annuity dependent upon any life or lives in being, shall be determined by the rule, method, and standard of mortality and value employed by the commissioner of insurance in ascertaining the value of policies of life insurance and annuities for the determination of liabilities of life insurance companies, except that the rate of interest for making such computation shall be five per cent (5%) per annum. The tax so determined shall be construed to be upon the transfer of a proportion of the principal or corpus of the estate equal to the present value of such future or limited estate, income, interest or annuity, and not upon any

earnings or income of said property produced after death. Such tax shall be due and payable forthwith, except as otherwise provided in this act.

(5) *Contingent encumbrances.* In estimating the value of any estate or interest in property to the beneficial enjoyment or possession whereof there are persons or corporations presently entitled thereto, no allowance shall be made in respect of any contingent encumbrance thereon, nor in respect of any contingency upon the happening of which the estate or property or some part thereof, or interest therein, might be abridged, defeated or diminished; provided, however, that in the event of such encumbrance taking effect as an actual burden upon the interest of the beneficiary, or in the event of the abridgment, defeat, or diminution of such estate or property or interest therein as aforesaid, a return shall be made to the person properly entitled thereto of a proportionate amount of such tax in respect of the amount or value of the encumbrance when taking effect or so much as will reduce the same to the amount which would have been assessed in respect to the actual duration or extent of the estate or interest enjoyed. Such return of tax shall be made in the manner provided in section 8.

(6) *Interest determinable by death.* Where any property shall, after the passage of this act, be transferred subject to any charge, estate or interest determinable by the death of any person, or at any period ascertainable only by reference to death, the increase of benefit accruing to any person or corporation upon the extinction or determination of such charge, estate or interest shall be deemed a transfer of property taxable under the provisions of this act in the same manner as though the person or corporation beneficially entitled thereto had then acquired such increase of benefit from the person from whom the title to their respective estate or interest is derived.

(7) *Tax payable forthwith on contingent estate.* When property is transferred in trust or otherwise, and the rights, interests, or estates of the transferees are dependent upon contingencies or conditions whereby they may be wholly or in part created, defeated, extended or abridged, a tax shall be imposed upon such transfer at the lowest rate which, on the happening of any of the said contingencies or conditions, would be possible under the provisions of this act, and such tax so imposed shall be due and payable forthwith out of the property transferred; provided, however, that on the happening of any contingency or condition whereby the said property or any part thereof is transferred to a person or corporation, which under the provisions of this act is required to pay a tax at a higher rate than the tax imposed, then such transferee shall pay the difference between the tax imposed and the tax at the higher rate, and the amount of such increased tax shall be enforced and collected as provided in this act.

(8) *Postponed tax on undiminished value.* Estates in expectancy which are contingent or defeasible, and in which proceedings for determination of the tax have not been taken, or where the taxation thereof has been held in abeyance, shall be appraised at their full undiminished clear value when the person entitled thereto shall come into the beneficial enjoyment or possession thereof without diminution for or on account of any valuation theretofore made of the particular estates for purposes

of taxation upon which said estates in expectancy may have been limited. Where an estate for life or for years can be divested by the act or omission of the legatee or devisee, it shall be taxed as if there were no possibility of such divesting.

(9) *Order determining tax—Contents—Notice.* Upon the determination by the district court of the value of any estate which is taxable under the inheritance tax laws, and of the tax to which it is liable, an order shall be entered by the court determining the same, which order shall include a statement of (a) the date of death of the decedent, (b) the gross value of the real and personal property of such estate, stating the principal items thereof, (c) the deductions therefrom allowed by the court, (d) the names and relationship of the persons entitled to receive the same, with the amount received by each, (e) the rates and amounts of inheritance tax for which each such person is liable, and the total amount of tax to be paid, (f) a statement of the amount of interest or penalty due, if any. Such order shall be substantially in the form prescribed by the state board of equalization. A copy of the same shall be delivered or mailed to the county treasurer, the state treasurer, the administrator or executor, and the state board of equalization, and no final judgment shall be entered in such estates until due proof is filed with the court that such copies have been so delivered or mailed, and receipts are filed with such court showing the payment of all such taxes, or proof is filed showing that the bond authorized by section 8 has been given.

(10) *Rehearing within sixty days.* The attorney general, state board of equalization, public administrator, county attorney, or any person dissatisfied with the appraisal or assessment and determination of such tax may apply for a rehearing thereof before the district court within sixty (60) days from the fixing, assessing and determination of the tax by the district court as herein provided on filing a written notice which shall state the grounds of the application for a rehearing. The rehearing shall be upon the records, proceedings, and proofs had and taken on the hearing as herein provided unless additional or newly discovered evidence be alleged therefor, and a new trial shall not be had or granted unless specially ordered by the district court.

(11) *Re-appraisal in the district court within one year.* Within one year after the entry of an order or decree of the district court determining the value of an estate and assessing the tax thereon, the attorney general or the state board of equalization may, if he (or they) believes that such appraisal, assessment, or determination has been erroneously, fraudulently or collusively made, make application to the district judge for a re-appraisal thereof. The district court to whom such application is made may thereupon appoint a competent person to re-appraise such estate. Such appraiser shall possess the powers, be subject to the duties, shall give the notice and receive the compensation provided by sections 14 and 15 of this act. Such compensation shall be payable by the county treasurer out of any funds he may have on account of any tax imposed under the provisions of this act, upon the certificate of the district judge. The report of such appraiser shall be filed in the office of the clerk of the district court, and thereafter the same proceedings shall be taken and had

by and before such district court as herein provided to be taken and had by and before the said court. The determination and assessment of such district court shall supersede the former determination and assessment of such court, and shall be filed in the office of the county treasurer, state treasurer, and state board of equalization.

En. Sec. 15, Ch. 65, L. 1923; Amd. Sec. 5, Ch. 150, L. 1925; Amd. Sec. 3, Ch. 141, L. 1927.

10377.16. Unpaid taxes — Proceedings to collect. If any county treasurer, state treasurer, or the state board of equalization shall have reason to believe that any tax is due and unpaid under the provisions of this act, after the refusal or neglect of any person liable therefor to pay the same, he or they, shall notify the attorney general in writing of such failure or neglect, and the attorney general, if he have probable cause to believe that such tax is due and unpaid, shall apply to the district court for a citation citing the person liable to pay such tax to appear before the court on the day specified, not more than three months from the date of such citation, and show cause why the tax should not be paid. The judge of the district court upon such application and whenever it shall appear to him that any such tax accruing under this act has not been paid as required by law, shall issue such citation, and the service of such citation and the time, manner and proof thereof, and the hearing and determination thereof, shall conform as near as may be to the provisions of the laws governing probate practice of this state, and whenever it shall appear that any such tax is due and payable, and the payment thereof cannot be enforced under the provisions of this act, in said district court, the person or corporation from whom the same is due is hereby made liable to the state for the amount of such tax, and it shall be the duty of the attorney general, in the name of the state, to sue for and enforce the collection of such tax, and it is made the duty of the county attorney of the county to appear for and act on behalf of any county treasurer, who shall be cited to appear before any district court under the provisions of this act.

En. Sec. 16, Ch. 65, L. 1923.

10377.17. (1) Special administration to determine tax. When no application for administration of the estate of any deceased person is made within six months after the demise of such person, and such estate appears to come under the provisions of the inheritance tax laws, or when administration has been completed without determining the tax, the public administrator of the proper county, or any person interested in such estate, may make application for such special or general administration as may be necessary for the purpose of the adjustment and payment of such tax, if any, or if no tax is due, for an order determining that fact. In cases arising under this and the following subsection, the public administrator, if appointed such special administrator, shall be entitled in the discretion of the court to the fees allowed by law to administrators, or to other reasonable compensation, unless it be found that no tax is due.

(2) Where transfer made in contemplation of death. Where it appears that the estate of a deceased person subject to the inheritance tax

laws was transferred in contemplation of the death of the grantor without the adjustment and payment of the inheritance taxes and no application for such adjustment is made within six months after the demise of such grantor, the public administrator of the proper county shall notify the state board of equalization and on its order make application for and shall be entitled to such general or special administration as may be necessary for the purpose of the adjustment and payment of the inheritance taxes provided by law and shall administer such estate the same as other estates are administered as though such estate had not been transferred by the grantor.

(3) *Public administrator — Duties — Compensation.* It shall be the duty of the public administrator, under the general supervision of the state board of equalization, and with the assistance of the county attorney, when required by the said board or district judge, to investigate the estates of deceased persons within his county and to appear for and act in behalf of the county and state in the district court in such estates as the court may in its discretion deem necessary, and for such services the public administrator shall be entitled to five per cent of the gross inheritance tax as determined in each such estate, to be paid by the county treasurer out of the inheritance tax funds upon an order of the district judge, provided that the minimum fee for each such estate shall not be less than five dollars, and that it shall not exceed twenty-five dollars; but in cases of unusual difficulty, in estates of resident decedents, where the tax exceeds five hundred dollars, the district judge may allow the public administrator such additional compensation as he may deem just and reasonable.

En. Sec. 17, Ch. 65, L. 1923.

10377.18. State board of equalization to supervise inheritance tax. It shall be the duty of the state board of equalization to supervise the administration of, and to investigate and cause to be investigated the administration of the inheritance tax laws, and such particular estates to which the inheritance tax laws apply throughout the various counties of the state, and to cause to be made and filed in its office reports of such investigation together with specific information and facts as to particular estates that may seem to require special consideration and attention by the legal department of the state; but no information so acquired shall, in advance of legal action, be disclosed to anyone except proper officials and persons interested in such estate.

(2) *Powers and duties of the board.* The state board of equalization in the conduct of inheritance tax affairs, shall have the same and similar powers and authority for gathering information and making investigations as is conferred by law on said board in the performance of its other duties. The said board shall biennially report to the governor and to the legislature at the opening of the sessions the general result of its labors and investigations in inheritance tax matters during the previous biennial period, together with specific reports of the several counties where the administration of the inheritance tax laws has been lax and unsatisfactory, with such recommendations for action thereon by the legislature as may be deemed advisable and proper.

(3) *Powers and duties in nonresident estates.* The state board of equalization shall also gather information and make investigations and reports concerning the estates of nonresident decedents within the provisions of the inheritance tax laws, and shall especially investigate the probate and other records for such probable estates without the state and report thereon from time to time to the legal department of the state and to the proper district court for appropriate legal action, but no information so acquired shall, in advance of legal action, be disclosed to anyone except proper officials, and persons interested in such estate.

(4) *Duty of the legal department.* It shall be the duty of the legal department of the state to carry out and enforce the recommendations and directions of the state board of equalization in all matters pertaining to the conduct of inheritance tax affairs; and in every estate in which the amount of inheritance tax collectible shall exceed or probably exceed the sum of one thousand dollars, there shall be no compounding, composition, or settlement of the taxes under the authority conferred by section 20 or otherwise, until the state board of equalization shall have investigated such estate and made a report thereon, nor until the said board consents to such compounding, compromise, or settlement.

(5) *Forms and blanks.* The state board of equalization shall prescribe such forms and prepare such blanks as may be necessary in inheritance tax proceedings in the district courts of the state; and such blanks shall be printed at the expense of the state and furnished to the district court upon the request of the judge or clerk thereof.

(6) *Duties of clerks of district courts.* It shall be the duty of the clerk of the district court to furnish to the state board of equalization copies of such documents filed in connection with probate matters as said board may require.

En. Sec. 18, Ch. 65, L. 1923; Amd. Sec. 6, Ch. 150, L. 1925.

10377.19. Quarterly reports of county treasurer—Tax to be paid to state. Each county treasurer shall make a report under oath to the state treasurer, on [or] prior to the fifth days of January, April, July and October of each year, of all taxes received by him under the inheritance tax laws, up to the first day of each of said months, stating for what estate, by whom and when paid. Said report shall be made in duplicate, the original to be mailed to the state treasurer, and the duplicate to the state board of equalization. The form of such report may be prescribed by the state treasurer. He shall at the same time pay the state treasurer all the taxes received by him under the inheritance tax laws and not previously paid into the state treasury, and for all such taxes collected by him and not paid into the state treasury within five days from the time herein required, he shall pay interest at the rate of ten per cent per annum.

En. Sec. 19, Ch. 65, L. 1923; Amd. Sec. 7, Ch. 150, L. 1925.

10377.20. Composition and compromise. The state board of equalization is authorized to enter into an agreement with the executor, administrator, or trustee of any estate in which remainders or expectant estates have been of such a nature or so disposed and circumstanced that the

taxes therein were held not presently payable or where the interests of the legatees or devisees are not ascertainable under the provisions of this act, or whenever a tax is claimed on account of the transfer of any property of a nonresident decedent, and to compound such taxes upon such terms as may be deemed equitable and expedient and to grant discharges to said executors, administrators, or trustees upon the payment of the taxes provided for in such composition, provided, however, that no such composition shall be conclusive in favor of such executors, administrators, or trustees as against the interests of such cestui que trust as may possess either present rights of enjoyment or fixed, absolute, on [or] indefeasible rights of future enjoyment, or of such as would possess such rights in the event of the immediate termination of particular estates, unless they consent thereto either personally when competent or by guardian. Composition or settlement made or affected under the provisions of this section shall be executed in triplicate and one copy shall be filed in the office of the clerk of the district court of the county in which the tax was paid; one copy to be delivered to the executors, administrators, or trustees, who shall be parties thereto; and one copy to be retained by said board.

En. Sec. 20, Ch. 65, L. 1923.

10377.21. Receipts, copies, recording. Any person shall be entitled to a receipt from the county treasurer of any county, or the state treasurer, or at his option to a copy of a receipt that may have been given by such county treasurer or state treasurer, for the payment of any tax under this act, under the official seal of such county treasurer, or state treasurer, which receipt shall designate upon whose estate such tax shall have been paid, by whom, and whether in full of such tax. Such receipt may be recorded in the office of the county recorder of the county in which such estate is situate in a book to be kept by him for that purpose, which shall be labeled "transfer tax."

En. Sec. 21, Ch. 65, L. 1923.

10377.22. Definitions. The words "estate" and "property" as used in this act shall be taken to mean the real and personal property or interest therein passing or transferred to individual legatees, devisees, heirs, next of kin, grantees, donees, or vendees, and not as the property or interest therein of the decedent, grantor, donor, or vendor, and shall include all personal property within or without the state. The word "transfer" as used in this act shall be taken to include the passing of property or any interest therein, in possession or enjoyment, present or future, by inheritance, descent, devise, succession, bequest, grant, deed, bargain, sale, gift, or appointment in the manner herein prescribed to each individual or corporation. The word "decedent" as used in this act shall include the testator, intestate, grantor, bargainor, vendor, or donor. "Intangible" or "intangible property" when used in this act without other qualifications, shall be taken to include all moneys, stocks, bonds, notes, securities and credits of all kinds, secured or unsecured. The words "county treasurer," "public administrator" and "county attorney," as used in this act shall be taken to mean the treasurer, public ad-

ministrator, and county attorney of the county in which the district court has jurisdiction of the proceedings.

En. Sec. 22, Ch. 65, L. 1923.

Cited in *State ex rel. Bankers' Trust Co. v. Walker*, 70 Mont. 484, 493, 226 Pac. 984.

10377.23. Disposition of taxes. Fifty per cent (50%) of all taxes levied and collected under the provisions of this act, less any deductions authorized under this act, shall be paid into the state treasury and deposited to the credit of the general fund of the state; and fifty per cent (50%) shall be deposited to the credit of an "inheritance tax fund" and distributed as follows:

The county superintendent of schools of each county in the state must, between the fifteenth day of August and the first day of September, in each year, make and file with the state treasurer a statement and certificate showing the total number of teaching positions, in which teachers were employed for a period of at least four months, during the school year ending June 30th immediately preceding, in all of the public schools in such county, including primary, grade, district high and county high schools, provided, however, that if during such school year, or after the close thereof and before the making of such statement and certificate, any portion of the county has been detached therefrom and added to another county, or detached therefrom and included in a new county, the number of teaching positions within the portion of such county so detached shall not be included in the statement and certificate of the county superintendent of schools of the county from which the same is detached, but such teaching positions shall be included in the statement and certificate of the county superintendent of schools of the county to which the same is attached, or in the statement and certificate of the county superintendent of schools of the new county.

Between August 15th and September 1st of each year, the state treasurer shall apportion the said inheritance tax fund to the several counties of the state in proportion to the total number of teaching positions in which teachers were employed for a period of at least four months, in each county, during the preceding school year, as shown by the statements and certificates of the county superintendents of schools, filed with the state treasurer for such school year, and said state treasurer must, at the time of making such apportionment, notify the county superintendent of schools of each county of the amount of such fund which has been apportioned and distributed to his respective county. Within ten days after receiving each such notice from the state treasurer, each county superintendent of schools must apportion the amount received and paid over to his county by the state treasurer, in the following manner, to wit: (a) Sixty per centum (60%) thereof shall be apportioned between and among the several school districts, district high schools and county high schools in proportion to the total number of teaching positions in which teachers were employed for at least four months, during the last preceding school year for which a statement and certificate was filed with the state treasurer by the county superintendent of schools, in each such school district, district high and county high school; (b) thirty-five per centum thereof shall be apportioned between and among the several school districts, dis-

trict high and county high schools in proportion to the aggregate number of days' attendance of all eligible pupils who attended for a period of not less than six weeks during the aforesaid school year in each district school, district high and county high school; (c) five per centum (5%) thereof shall be apportioned between and among the district high schools and county high school in proportion to the number of years of accredited high school work during the aforesaid school year in each such district high and county high school.

Immediately after making such apportionment the county superintendent of schools must make and file with the county treasurer a statement and certificate showing the total amount apportioned to each school district, district high and county high school, and the county treasurer must, on receiving such statement and certificate, immediately credit the general fund of each school district, district high and county high school with the amount to which each is entitled as shown by such statement and certificate, and such amounts shall be expended for the same purpose for which other moneys deposited to the credit of such funds may be expended, and for no other purpose.

En. Sec. 23, Ch. 65, L. 1923.

10377.24. Powers of state board to appoint and fix compensation. The state board of equalization may employ such other persons as experts and assistants as may be necessary to perform the duties that may be required of the board and fix their compensation.

En. Sec. 24, Ch. 65, L. 1923.

10377.25. Hearings by state board of equalization—Witnesses—Contempt, etc. Oaths to witnesses in any matter under the investigation or consideration of the state board of equalization may be administered by the secretary of the board or by any member thereof. In case any witness shall fail to obey any summons to appear before said board or shall refuse to testify or answer any material questions or to produce records, books, papers, or documents, when required to do so, such failure or refusal shall be reported to the attorney general, who shall thereupon institute proceedings in the proper district court to compel obedience to any summons or order of the board or to punish witnesses for any such neglect or refusal. Any person who shall testify falsely in any material manner under the consideration of the said board shall be guilty of and punished for perjury. In the discretion of the said board, officers who serve summons or subpoenas, and witnesses attending, shall receive like compensation as officers and witnesses in the district court.

En. Sec. 25, Ch. 65, L. 1923.

10377.26. Repeal. Sections 10377 to 10400, both inclusive, of the Revised Codes of Montana, 1921, and all other acts and parts of acts in conflict herewith are hereby repealed, provided, however, that such repeal shall not in anywise affect any suit, prosecution or proceeding pending at the time this act shall take effect, or any right which the state of Montana may have at the time of the taking effect of this act to claim a tax upon any property, or from any person, under the provisions of any of

the sections or acts hereby repealed or under any prior laws repealed by such acts and which rights were reserved therein, for which no proceeding has been commenced to collect any tax arising thereunder, and where no proceeding has been commenced to collect any such tax the procedure to collect the same shall conform to the provisions hereof, and such repeal shall not affect any appeal or right of appeal in any suit now pending, or any order or orders fixing or determining the amount of any tax or taxes existing in this state at the time of the taking effect of this act.

En. Sec. 26, Ch. 65, L. 1923.

10378. Estates not exceeding twenty-five thousand dollars—Imposition of tax—Primary rates.

Cited in State ex rel. Murray v. Walker, 64 Mont. 215, 224, 210 Pac. 90.

10379. Estates in excess of twenty-five thousand dollars—Imposition of tax.

Cited in State ex rel. Murray v. Walker, 64 Mont. 215, 225, 210 Pac. 90.

10380. Exemptions from first twenty-five thousand.

Cited in State ex rel. Murray v. Walker, 64 Mont. 215, 225, 210 Pac. 90.

10381. Taxes—When and how payable.

Cited before amendment in In re Sattes' Estate, 59 Mont. 220, 224, 195 Pac. 1035.

CHAPTER 58.

GUARDIANS OF MINORS.

10407. Powers and duties of guardians.

Cited in State ex rel. Sheedy v. District Court, 66 Mont. 427, 433, 213 Pac. 802.

CHAPTER 59.

GUARDIANS OF INSANE AND INCOMPETENT PERSONS.

10412. Guardians of insane and other incompetent persons..

On petition for the appointment of a guardian for an insane person, service of notice of time and place of hearing as required by this section, is essential to the validity of the order of appointment. State ex rel. Kelly v. District Court et al., 73 Mont. 84, 235 Pac. 751.

The notice required by this section to be served upon a person sought to be placed under guardianship as an incompetent must be served as a citation, which in turn must be served as a summons; therefore, since a summons cannot be

served by a party to the proceeding, service made by petitioner for letters of guardianship was void. State ex rel. Kelly v. District Court et al., 73 Mont. 84, 235 Pac. 751.

This and section 10415 were cited as sections 7764 and 7767, Revised Codes, in In re Carroll's Estate, 59 Mont. 403, 410, 196 Pac. 996.

For text treatment of this subject see vol. 14 Cal. Jur. 353.

10414. Powers and duties of such guardians.

Sections 10414-10417 were cited in Pethybridge v. First State Bank of Livingston, 75 Mont. 173, 179, 243 Pac. 569.

10415. Petition for restoration to capacity.

Cited in State ex rel. Kelly v. District Court et al., 73 Mont. 84, 92, 235 Pac. 751.

CHAPTER 60.

POWERS AND DUTIES OF GUARDIANS.

10422. Guardian to return inventory of estate of ward—Appraisers to be appointed—Like proceedings when other property acquired.

Where a guardian fails to return into court inventories of the estate in his charge as provided by this section, or render his account to the court for allowance as required by section 10423, the court may, in its discretion, disallow fees to his guardian and those paid or con-

tracted to be paid by him to his counsel as penalty for such failure. *In re Cuffe's Estate*, 63 Mont. 399, 207 Pac. 640.

For text treatment of this subject see vol. 13 Cal. Jur. 192.

10423. Settlements of guardians.

Applied with section 10422 in *In re Cuffe's Estate*, 63 Mont. 399, 408, 207 Pac. 640.

10425. Expenses and compensations of guardians.

Cited in *In re Cuffe's Estate*, 63 Mont. 399, 409, 207 Pac. 640.

CHAPTER 61.

SALES OF PROPERTY BY GUARDIAN.

10434. Service of order—Consent. A copy of the order must be personally served on the next of kin of the ward, and on all persons interested in the estate, at least fourteen days before the hearing of the petition, or must be published at least once a week for three successive weeks in a newspaper printed in the county, or if there be none printed in the county, then in such newspaper as may be specified by the court or judge in the order. If written consent to making the order of sale is subscribed by all persons interested therein, and the next of kin, notice need not be served or published, and the hearing may be had at any time.

Amd. Sec. 1, Ch. 73, L. 1927.

CHAPTER 62.

NONRESIDENT GUARDIANS AND WARDS.

10444. Guardians of nonresident persons.

Cited in *State ex rel. Kelly v. District Court et al.*, 73 Mont. 84, 91, 235 Pac. 751.

CHAPTER 65.

FINANCIAL AID OF DEPENDENT CHILDREN—MOTHERS' PENSION ACT.

10480. Allowance for dependent children.

Courts cannot inquire into or control matters of legislative policy; hence they may not, in the construction of a statute, pass upon the questions whether legislation, such as the Mothers' Pension Law, is wise or unwise or whether in its practical application it fails to meet the needs of any particular county. *State ex rel. Board of County Commrs. v. District Court*, 62 Mont. 275, 204 Pac. 600.

Under this and following sections of the act, one-half of the county poor fund is automatically set aside for the payment of mothers' pensions, if such amount is needed for that purpose, the remaining half only being thus available for the payment of warrants for other charges against the poor fund. *State ex rel. Board of County Commrs. v. District Court*, 62 Mont. 275, 204 Pac. 600.

10482. Conditions of allowance — Application — Hearing — Reports — Citations. The allowance herein referred to shall be made subject to the following conditions: (1) The child or children for whose benefit allowance is made must be living with the mother of such child or children; (2) The allowance shall be made only when in the absence of such allowance the mother is unable to properly provide and care for said child or children, without being required to work regularly away from her own home and children, provided that the mother may be at times absent for work with the consent of the judge of the district court if he should deem it for the best interest of said child or children; (3) The mother must, in the judgment of the court, be a proper person physically, mentally and morally for the bringing up of her children; (4) Such allowance shall, in the judgment of the court, be actually necessary for the support and maintenance of the child or children in the home; (5) No person shall receive the benefit of this act who is not a citizen of the United States or who has not declared her intention to become such citizen, and who shall not have been a resident of the county in which said application is made for at least one year prior to the making of such application for such allowance; (6) The provisions of this act shall not apply in the case of any child who has property of its own sufficient for its support; (7) Application shall be made by the mother to the county attorney, whose duty it shall be to prepare and file in the district court of the county a petition, verified by the mother of such child or children, setting forth the facts above required, and in addition thereto the age and the residence of such child or children, the residence of the mother, and the financial conditions of such mother and child, or children; that upon the filing of such petition the court shall designate the bureau of child and animal protection of the state of Montana, the county probation officer, or some other responsible resident of the county wherein the mother resides, to make a thorough investigation of all the facts of the case and the court must make an order setting said petition for hearing before the court not less than fifteen days, nor more than thirty days from the filing thereof, and may in his discretion, require the clerk of the court to give notice of the hearing of such application by posting notice thereof in three conspicuous places in the county and by serving upon the probation officer of the county or such responsible resident of the county appointed by the court to make an investigation of the facts of the case a copy of said notice, together with a copy of said petition, and by mailing a copy of said notice to the chairman of the board of county commissioners at least ten days before the date set for such hearing. That upon receiving said notice the probation officer of the county or such other responsible resident of the county appointed by the court to make an investigation of the facts of the case must make a thorough investigation of all the facts of the case and make and file with the court at least five days before the time set for such hearing, his findings and report thereon under oath, and must appear at the hearing of said application and testify in support of said findings and report if required. And it is hereby made the duty of the county attorney to appear at such hearing and conduct an investigation thereat of all the facts in the case, and it is also made his duty to subpoena and examine at said hearing any witnesses known to him whose

testimony will aid or enlighten the court upon the facts to be investigated at such hearing. Any person having any knowledge of the facts may appear at said hearing and be examined under oath as to such facts; and any taxpayer may appear at said hearing and file objection to the allowance of the application, and may be heard upon such objection at said hearing at the time fixed therefor in said notice, or at any time to which said hearing may be continued. (8) Every person receiving an allowance under this act shall every month file with the clerk of the district court a report in writing, upon blanks to be supplied by the county, verified under oath, showing a detailed statement of all income of the family from whatever source for the preceding month, whether or not she has remarried, whether any of the children for whom she is receiving an allowance for support have died, or are not living with her, or are not being supported by her; her present place of residence, and the present place of residence of the children for whom she is receiving an allowance, whether any of such children have attained the age of sixteen years or have acquired property sufficient for their support; provided, however, that if such person receiving an allowance under this act, lives more than five miles from the county seat, then said report need not be verified, but shall be sufficient if signed by the person receiving the allowance, and two witnesses; (9) Upon the receipt of the report as required by the provisions of the preceding subsection, the clerk of the district court shall notify the board of county commissioners, who shall direct the monthly warrant to be drawn for the allowance and no warrant to be drawn until such notice has been received by board of county commissioners. (10) It shall be the duty of the court to inspect the monthly report required by this act, and when it shall appear from such report that the beneficiary is no longer entitled to the allowance, said order of allowance shall be revoked and set aside by the court. (11) Any taxpayer of the county may at any time after the filing of the order of allowance, file in said court a petition verified upon oath, setting forth facts showing that the order was fraudulently procured or that the conditions of allowance above named no longer exist, or that said report by the mother as above required has not been made, or if made, is false and fraudulent. If, in the opinion of the court, such petition is sufficient, the court shall cause a citation to issue to the mother of said child or children, fixing a time and place when and where she shall show cause why the order of allowance attacked should not be set aside.

Amd. Sec. 1, Ch. 12, L. 1927.

10483. Order of court—Recording—Warrants, how issued.

Warrants issued against the poor fund and registered prior to July 1, 1921, were a direct charge against the entire fund, and persons receiving or registering poor fund warrants after that date were

chargeable with knowledge that they became a charge against half of that fund only. *State ex rel. Board of County Commrs. v. District Court*, 62 Mont. 275, 204 Pac. 600.

PART V.**Evidence.****CHAPTER 1.****DEFINITIONS, KINDS AND DEGREES OF EVIDENCE.****10491. The degree of certainty required to establish facts.**

"Moral certainty" and the phrase "beyond a reasonable doubt" as employed in section 10672, providing that conviction can be secured only upon evidence which established guilt beyond a reasonable doubt, are synonymous. *State v. Mun*, 76 Mont. 278, 246 Pac. 257.

The provision of this section that the law does not require demonstration, moral certainty only or that degree of proof which produces conviction in an unprejudiced mind being sufficient, is applicable

in the trial of criminal cases. *State v. Cassill et al.*, 71 Mont. 274, 229 Pac. 716.

An instruction on the degree of proof necessary to establish facts in the exact language of this section, was proper. *State v. Fredericks*, 65 Mont. 25, 212 Pac. 495.

Cited in *Reilly v. City of Butte*, 64 Mont. 355, 360, 209 Pac. 1057.

For text treatment of this subject see vol. 10 Cal. Jur. 687, 794, 1151.

10495. Secondary evidence defined.

Cited in *Angell v. Lewistown State Bank et al.*, 72 Mont. 345, 350, 232 Pac. 90.

10497. Indirect evidence defined.

Cited as section 7853, Revised Codes, in 272; *State v. Evans*, 60 Mont. 367, 374, 199 Pac. 440.

10498. Prima facie evidence defined.

Cited in *State ex rel. Merrill v. District Court*, 72 Mont. 77, 82, 231 Pac. 1107.

10502. Conclusive evidence defined.

Cited in *In re Peters*, 73 Mont. 284, 287, 235 Pac. 772.

10503. Cumulative evidence defined.

The question whether evidence is "cumulative" within the meaning of this section, does not depend upon the quantity or probable effect of the evidence, but upon its character, and if it brings to light some new and independent fact of a different character than that theretofore elicited, though tending to prove

the same proposition or ground of claim before canvassed, it is not cumulative. *Jenkins v. Kitsen*, 62 Mont. 515, 205 Pac. 243.

For text treatment of this subject see vol. 10 Cal. Jur. 690.

CHAPTER 2.**GENERAL PRINCIPLES OF EVIDENCE.****10505. One witness sufficient to prove a fact.**

If the manner in which a witness testifies is such and his statements are so that there is produced in the mind of the court a conviction that they are not and cannot be true, and the right of the plaintiff to recover depends on such testimony, the cause should not be submitted

to the jury. *Whitney v. Bertoglio Mercantile Co.*, 65 Mont. 358, 211 Pac. 323.

Since under this section and section 10672 the burden of proof is not to be determined by the number of witnesses introduced, the direct evidence of the plaintiff showing nonpayment of a cer-

tificate of deposit in suit was sufficient to establish that fact. *O'Langen v. First State Bank of Hilger*, 59 Mont. 190, 196 Pac. 149.

Cited in *State v. Grasswick*, 77 Mont. 326, 330, 250 Pac. 613; *Ayers v. Buswell*, 73 Mont. 518, 527, 238 Pac. 591; *Independent M. & C. Co. v. Aetna L. I.*

Co., 68 Mont. 152, 159, 216 Pac. 1109; *Doane v. Marquisee*, 63 Mont. 166, 171, 206 Pac. 420.

For text treatment of this subject see vol. 8 Cal. Jur. 171; vol. 10 Cal. Jur. 1135, 1143.

10506. Testimony confined to personal knowledge.

Cited in *Solbert v. Sunburst Oil & Gas Co.*, 73 Mont. 94, 107, 235 Pac. 761

10508. Witness presumed to speak the truth.

A district court may in its discretion, where the facts warrant it, caution the jury respecting the testimony of witnesses who appear to be interested in the result of the case, provided it does so in an instruction general in character and does not single out a single witness and call attention to his testimony. *State v. Kessler*, 74 Mont. 166, 239 Pac. 1000.

Cited in *State v. Wilson*, 76 Mont. 384, 392, 247 Pac. 158; *State v. Kacar*, 74 Mont. 269, 282, 240 Pac. 365; *State v. Sedlacek*, 74 Mont. 201, 215, 239 Pac. 1002; *State v. Jackson*, 71 Mont. 421,

433, 230 Pac. 370; *Sanger v. Huguenel et al.*, 65 Mont. 236, 242, 211 Pac. 349; *State v. Richardson*, 63 Mont. 322, 336, 207 Pac. 124.

Impeachment of witness by expert evidence tending to show moral or mental defects, note, 15 A. L. R. 932.

Impeachment of witness by showing use of drugs, note, 15 A. L. R. 912.

For text treatment of this subject see vol. 8 Cal. Jur. 280; vol. 10 Cal. Jur. 1038, 1144, 1160; 27 Cal. Jur. 124, 135, 145, 179-182.

10510. Declarations of predecessor in title evidence.

Cited as section 7866, Revised Codes, in *Nelson v. Gough et al.*, 61 Mont. 301, 304, 202 Pac. 196.

10514. Declaration of decedent evidence against his successor in interest.

Though declarations against his interest made by a decedent are admissible under this section, they constitute testimony of unsatisfactory character and should be received and weighed with caution. *Gray*

v. Grant et al., 62 Mont. 452, 206 Pac. 410.

For text treatment of this subject see vol. 10 Cal. Jur. 913, 1098.

10515. When part of the transaction proved, the whole is admissible.

Under this section, as well as under settled law generally, where one introduces a part of a document or writing (here a city ordinance), so much of the remainder as may tend to explain or qualify that which has been received, is admissible in evidence at the instance of his adversary. *Varn v. Butte Electric Ry. Co. et al.*, 77 Mont. 124, 249 Pac. 1070.

Under this section, where one party introduces a part of a series of letters touching the transaction in controversy,

the other party is entitled to introduce the remaining portion if material to a complete understanding of the entire transaction. *Northwestern E. E. Co. v. Leighton et al.*, 66 Mont. 529, 213 Pac. 1094.

Proof of entire conversation containing alleged confession, notes, 2 A. L. R. 1017; 26 A. L. R. 541.

For text treatment of this subject see vol. 8 Cal. Jur. 82, 118; vol. 10 Cal. Jur. 801, 821, 1080, 1127; 27 A. L. R. 105.

10516. Contents of writing—How proved.

In an action to recover a broker's commission, in which plaintiff's cause of action was founded upon a letter written to plaintiff by defendant giving a descrip-

tion of the lands, and stating price per acre, commission allowed, etc., but which had been forwarded by plaintiff to a prospective purchaser in another state and

of which she had been unable to regain possession, refusal to permit secondary evidence of its contents was error, since under this section, a letter out of the jurisdiction is deemed to be "lost," making parol evidence of what it contained admissible. *Kile v. Kingsbury*, 63 Mont. 145, 206 Pac. 346.

A showing that the owner of a private writing removed to a foreign country sufficiently accounts for its nonproduction to warrant admission of oral testimony to prove its contents, the presumption be-

ing that he took it with him. *Nelson v. Gough et al.*, 61 Mont. 301, 202 Pac. 196.

Sections 10516, 10517, were cited in *Burnett v. Burnett*, 68 Mont. 546, 549, 219 Pac. 831; as section 7872, Revised Codes, in *Hawley v. Richardson*, 60 Mont. 118, 126, 198 Pac. 450.

For text treatment of this subject see vol. 8 Cal. Jur. 138; vol. 10 Cal. Jur. 850-858; vol. 16 Cal. Jur. 697; vol. 22 Cal. Jur. 640, 645.

10517. An agreement reduced to writing deemed the whole.

Where the signers of a promissory note unqualifiedly bound themselves to pay a certain sum of money at a specified time, parol evidence was inadmissible for the purpose of showing that the payee in an oral contemporaneous stipulation had agreed that payment could be made in a certain manner; such oral agreement was superseded by the writing, and the evidence, erroneously admitted, tended to vary and contradict the writing, contrary to the provisions of this section, where the validity of the note was not attacked and a mistake or imperfection in the writing was not pleaded. *Swan v. Le Clair et al.*, 77 Mont. 422, 251 Pac. 155.

In the absence of fraud, an unconditional written contract of purchase of building material presumably embraced the whole agreement of the parties; hence evidence of an oral understanding that it should not become binding until the architect in charge had approved the materials, was inadmissible. *Wheeler v. James*, 70 Mont. 37, 223 Pac. 900.

In the absence of fraud or mistake, a written contract supersedes all prior oral negotiations with relation thereto; therefore parol testimony to show that the understanding of parties to a promissory note which provided for the payment of interest but did not specify the rate was that no interest at all was payable was properly excluded. *Burnett v. Burnett*, 68 Mont. 546, 219 Pac. 831.

An offer of proof by defendant directors who had guaranteed payment of an account as represented by a note of the corporation, that it was their understanding that the guaranty was to be deemed merely an assurance on their part that plaintiff's account was recognized as a valid claim against the company, was properly rejected under this section, as contradicting the terms of the writing. *Schauer v. Morgan et al.*, 67 Mont. 455, 216 Pac. 347.

Under this section and 7520, when a contract has been reduced to writing its contents cannot be added to, contradicted, altered or varied by parol or extrinsic

evidence, and the writing supersedes all oral negotiations concerning its matter which preceded, accompanied or led up to its execution. *Webber v. Killorn et al.*, 66 Mont. 130, 212 Pac. 852.

Prior oral negotiations and directions as to points at which livestock should be stopped for resting and feeding were merged in the contract of shipment, where it and the waybills bore notations stating the points at which stops were to be made, and therefore parol testimony of directions to make other stops was incompetent as an attempt to vary the terms of the written contract. *Cook et al. v. Northern Pacific Ry. Co.*, 61 Mont. 573, 203 Pac. 512.

Cited in *Peterson v. Nelson*, 77 Mont. 539, 550, 252 Pac. 368; *Bridges & Co., Inc., v. Bank of Fergus County*, 77 Mont. 524, 533, 251 Pac. 1057; *Anderson v. Border et al.*, 75 Mont. 516, 529, 244 Pac. 494; *Ayers v. Buswell*, 73 Mont. 518, 524, 238 Pac. 591; *Humble v. St. John et al.*, 72 Mont. 519, 527, 234 Pac. 475; *Baroch v. Greater Montana Oil Co.*, 70 Mont. 93, 98, 225 Pac. 800; *Morehouse v. Northern Land Co.*, 68 Mont. 96, 103, 216 Pac. 792; *Adams v. Durfee et al.*, 67 Mont. 315, 323, 215 Pac. 664; *Leigland v. Rundle L. & A. Co.*, 64 Mont. 154, 165, 208 Pac. 1075; as section 7873, Revised Codes, in *State v. Broadwater Elevator Co. et al.*, 61 Mont. 215, 223, 201 Pac. 687; *Rowe v. Emerson-Brantingham Co.*, 61 Mont. 73, 78, 201 Pac. 316; *McCaull-Dinsmore Co. v. Stevens*, 59 Mont. 206, 194 Pac. 213.

Parol evidence rule as applied to lease, note, 25 A. L. R. 812.

Parol evidence to show that bill or note was given for special purpose, note, 20 A. L. R. 421.

Parol evidence to vary or explain contract implied from the regular indorsement of a bill or note, notes, 4 A. L. R. 764; 11 A. L. R. 637; 22 A. L. R. 527; 35 A. L. R. 1120.

Parol evidence as to whether one whose name appears on face of a note signed

as witness or maker, note, 15 A. L. R. 197.

Conclusiveness of recital in option of receipt of consideration which was not paid, note, 27 A. L. R. 1127.

Parol evidence to vary or explain restrictive indorsements, note, 35 A. L. R. 1121.

Parol evidence as to personal liability of one who indorses, without qualification, commercial paper of corporation, notes, 42 A. L. R. 1075, 46 A. L. R. 496.

Parol evidence rule as applied to escrow agreement, note, 49 A. L. R. 1529.

Parol evidence in relation to assumption of mortgage debt by grantee of mortgaged property, note, 50 A. L. R. 1220.

Parol evidence of agreement affecting priority as between holders of different notes secured by same mortgage, note, 50 A. L. R. 582.

For text treatment of this subject see vol. 6 Cal. Jur. 249-252, 263, 277, 294; vol. 10 Cal. Jur. 916 et seq.

10519. Construction of statutes and instruments—General rule.

Under this section, the office of courts, in construing a statute, is simply to ascertain and declare what is in terms or in substance contained therein, not to write into the act words which the legislature saw fit to omit. *Morrison v. Farmers' etc. State Bank*, 70 Mont. 146, 225 Pac. 123.

Sections 10519, 10520 were cited in *State v. Redmond*, 73 Mont. 376, 380, 237 Pac. 486; *Novak v. Industrial Accident Board*, 73 Mont. 196, 203, 235 Pac. 754; *Gregg v. Bayers*, 73 Mont. 165, 167, 235 Pac. 337; *Fergus Motor Co. v. Sorenson*, 73 Mont. 122, 138, 235 Pac. 422; *In re Tripp's Estate*, 71 Mont. 154, 162,

227 Pac. 1005; *State v. Certain Intoxicating Liquors*, 71 Mont. 79, 84, 227 Pac. 472; *State ex rel. Sheedy v. District Court*, 66 Mont. 427, 433, 213 Pac. 802; *Square Butte State Bank v. Ballard*, 64 Mont. 554, 559, 210 Pac. 889.

Section 7875, Revised Codes, in *State v. Mason*, 62 Mont. 180, 192, 204 Pac. 358; *County of Hill v. County of Liberty*, 62 Mont. 15, 17, 203 Pac. 500; *State v. Stein*, 60 Mont. 441, 446, 199 Pac. 278.

For text treatment of this subject see vol. 5 Cal. Jur. 456; vol. 10 Cal. Jur. 884.

10520. The intention of the legislature or parties.

Where under the first clause of a contract a party bound himself generally as a surety, but under a subsequent one the conditions under which he would be liable were particularly set forth which in effect made him a guarantor, the two clauses were so inconsistent with each other as to warrant application of the doctrine announced by this section, that where a general and particular provision of a contract are inconsistent the latter must prevail, and therefore the promisor was a guarantor and not a surety and could not be joined as defendant with the lessee of property in an action to recover rentals, payment of which he had guaranteed. *Butte Machinery Co. v. Carbonate Hill Mining Co.*, 75 Mont. 167, 242 Pac. 956.

Cited in *Wall v. Duggan et al.*, 76 Mont. 239, 245, 245 Pac. 953; *In re Oppenheimer's Estate*, 73 Mont. 560, 570, 238 Pac. 599; *Cottonwood Coal Co. v. Junod*, 73 Mont. 392, 397, 236 Pac. 1080; *Novak v. Industrial Accident Board*, 73

Mont. 196, 203, 235 Pac. 754; *Fergus Motor Co. v. Sorenson*, 73 Mont. 122, 126, 235 Pac. 422; *State ex rel. Boone v. Tullock*, 72 Mont. 482, 487, 234 Pac. 277; *Lee v. Lee Gold Mining Co. et al.*, 71 Mont. 592, 599, 230 Pac. 1091; *State v. Certain Intoxicating Liquors*, 71 Mont. 79, 84, 227 Pac. 472; *Morrison v. Farmers' etc. State Bank*, 70 Mont. 146, 151, 225 Pac. 123; *Wibaux Improvement Co. v. Breitenfeldt*, 67 Mont. 206, 210, 215 Pac. 222; *Lensing v. Day & Hansen Security Co.*, 67 Mont. 382, 385, 215 Pac. 999; *Winkelmann v. Minnesota M. L. Ins. Co.*, 66 Mont. 451, 460, 213 Pac. 1104; as section 7876, Revised Codes, in *County of Hill v. County of Liberty*, 62 Mont. 15, 17, 203 Pac. 500; *State v. Stein*, 60 Mont. 441, 446, 199 Pac. 278; *Page v. New York Realty Co.*, 59 Mont. 305, 316, 196 Pac. 871.

For text treatment of this subject see vol. 6 Cal. Jur. 282, 283; vol. 10 Cal. Jur. 885; vol. 23 Cal. Jur. 727.

10521. The circumstances to be considered.

Cited in *Lewis v. Aronow*, 77 Mont. 348, 357, 251 Pac. 146; *Anderson v. Border et al.*, 75 Mont. 516, 529, 244 Pac. 494; *United States Nat. Bank v. ChapPELL*, 71 Mont. 553, 566, 230 Pac. 1084; *Baroch v. Greater Montana Oil Co.*, 70

Mont. 93, 98, 225 Pac. 800; as section 7877, Revised Codes, in *Cook et al. v. Northern Pacific Ry. Co.*, 61 Mont. 573, 586, 203 Pac. 512; *State Bank of Darby v. Pew et al.*, 59 Mont. 144, 151, 106 Pac. 852.

10522. Terms to be construed in their general acceptation.

Cited in *Lewis v. Aronow*, 77 Mont. 348, 358, 251 Pac. 146.

10529. Evidence confined to material allegations.

The test to be applied in determining whether testimony offered for impeachment purposes relates to a collateral matter is whether the fact sought to be shown could be shown for any purpose independently of the contradiction. *State*

ex rel. Bourquin v. Morris et al., 67 Mont. 40, 214 Pac. 332.

For text treatment of this subject see vol. 10 Cal. Jur. 797-806.

10531. Facts which may be proved on trial.

An affidavit filed in support of a motion for a continuance on account of the absence of a witness and setting forth what the witness would testify to if present, the motion being denied on opposing counsel's admission that the witness would so testify, is not admissible as evidence on a second trial of the cause as testimony given at a former trial between the same parties relating to the same matter. *Kelly v. Kipp et al.*, 77 Mont. 110, 250 Pac. 819.

Under subdivision 3 of this section, providing that upon a trial evidence may be given of an act or declaration of another in the presence and within the observation of a party, and his conduct in relation thereto, where one who on being accused of crime remains silent, though he has full liberty to speak, his failure to reply or deny is relevant as showing his guilt, the accusatory statement being admissible, not as evidence of the truth of the statement, but as tending to show his admission by his silence; the rule applies though defendant was under arrest at the time, but does not extend to statements made in his presence at a judicial hearing or proceeding. *State v. Won*, 76 Mont. 509, 248 Pac. 201.

For discussion of the showing necessary to render an alleged dying declaration admissible in evidence, see *State v. Martin*, 76 Mont. 565, 248 Pac. 176; *State v. Vetter*, 76 Mont. 574, 248 Pac. 179.

Statement made by decedent the day before his death upon being questioned by the witness as to whether he thought he would live, that he was going to die from the wound inflicted and that he was shot by his wife, was admissible as his dying declaration. *State v. Kacar*, 74 Mont. 269, 240 Pac. 365.

Under this section parol testimony relative to a contract of purchase of building materials to the effect that it was customary to first obtain the approval of the architect before it should become binding, was inadmissible. *Wheeler v. James*, 70 Mont. 37, 223 Pac. 900.

The rule that a defendant in a criminal

case cannot be bound by conversations between third persons in his absence does not apply to acts and declarations of a co-conspirator done or made in furtherance of a common design during the life of the conspiracy, in which case, they are admissible after proof of the conspiracy. *State v. Hopkins*, 68 Mont. 504, 219 Pac. 1106.

Under this section a witness who had not been shown to have any theoretical or practical knowledge of constructing or operating a ferry-boat was not qualified to express an opinion respecting the subject. *State ex rel. Rankin v. Martin*, 68 Mont. 392, 219 Pac. 632.

The opinion of a layman that a person is incompetent, where the reasons for the opinion are unsatisfactory, cannot be considered such substantial evidence as will warrant the submission of the question of his incompetency to a jury, in the face of positive and affirmative acts and conduct on his part clearly indicating mental capacity. *Sommerville v. Greenwood*, 65 Mont. 101, 210 Pac. 1048.

Error in permitting a layman to give his opinion as to defendant's sanity without having qualified under subdivision 10 of this section, as an intimate acquaintance, was harmless where the only evidence of defendant's insanity consisted of his behavior on the stand and of his incoherent and meaningless answers, all the witnesses testifying to his mental condition declaring him sane, without contradiction or conflict. *State v. Davis*, 60 Mont. 426, 199 Pac. 421.

Cited in *Lewis v. Aronow*, 77 Mont. 348, 358, 251 Pac. 146; *Sommerville v. Greenwood*, 65 Mont. 101, 120, 210 Pac. 1048; *In re Estate of Redfern*, 64 Mont. 49, 56, 208 Pac. 1072; *State v. Richardson*, 63 Mont. 322, 336, 207 Pac. 124; as section 7887, Revised Codes, in *Cook et al. v. Northern Pacific Ry. Co.*, 61 Mont. 573, 586, 203 Pac. 512; *State v. Byrne*, 60 Mont. 317, 326, 199 Pac. 262.

Expert testimony as to finger-prints, note, 10 A. L. R. 373.

Opinion evidence as to footprints, note, 31 A. L. R. 210.

Entries in family Bible as evidence, note, 29 A. L. R. 372.

Use in civil case of testimony given in criminal case by witness no longer accessible, note, 46 A. L. R. 463.

For text treatment of this subject, see vol. 1 Cal. Jur. 471; vol. 3, Cal. Jur. 972;

vol. 5 Cal. Jur. 513; vol. 6 Cal. Jur. 315; vol. 8 Cal. Jur. 98, 101, 119-124, 126, 134, 148-165; vol. 10 Cal. Jur. 797, 809, 841, 896, 944, 957, 978 et seq., 1045, 1110, 1125-1132; vol. 14 Cal. Jur. 368; vol. 16 Cal. Jur. 929; vol. 20 Cal. Jur. 745, 782; vol. 26 Cal. Jur. 746-755.

CHAPTER 3.

JUDICIAL NOTICE OF FACTS.

10532. Certain facts of general notoriety assumed to be true—Specification of such facts.

In an action for the rescission of a land contract in which plaintiff claimed that defendant had included lands in his contract of sale which were owned by the Northern Pacific Railway Company as a right of way, while the trial court could properly take judicial notice, under this section, that the Northern Pacific Railway Company is the successor of the Northern Pacific Railroad Company, it could not take such notice that the federal grant to the company attached to any particular tract of land, or that a particular tract of land was public land at the time of the taking effect of the grant. *Lasby et al. v. Burgess*, 76 Mont. 452, 248 Pac. 190.

Under this section, courts take judicial notice of the form and contents of the Third and Fourth Liberty bond issues and

of Victory Loan bonds. *Grosfield v. First Nat. Bank*, 73 Mont. 219, 236 Pac. 250.

Courts take judicial notice of the fact that the federal government did not take over and assume jurisdiction of the railroads until January 1, 1928, and that for injuries prior to that date it cannot be held responsible. *Stevens v. Hines et al.*, 63 Mont. 94, 206 Pac. 441.

Cited in *Rohr v. Stanton Trust & Savings Bank*, 76 Mont. 248, 251, 245 Pac. 947; *Fergus County v. Federal Reserve Bank*, 75 Mont. 582, 592, 244 Pac. 883; *State ex rel. Bacorn v. District Court*, 73 Mont. 297, 304, 236 Pac. 553; *State v. Pepper*, 70 Mont. 596, 604, 226 Pac. 1108.

For text treatment of this subject see vol. 10 Cal. Jur. 691 et seq.; vol. 23 Cal. Jur. 171, 607, 663, 748, 977.

CHAPTER 4.

WITNESSES.

10534. All persons capable of perceptions and communication may be witnesses.

A violation of the White Slave Act may be proved by the uncorroborated testimony of the prosecuting witness, a woman being no less a competent witness because she engages in prostitution. *State v. Pippi*, 59 Mont. 116, 195 Pac. 556.

Cited in *Solberg v. Sunburst Oil & Gas Co.*, 73 Mont. 94, 107, 235 Pac. 761.

For text treatment of this subject see vol. 10 Cal. Jur. 1130; vol. 27 Cal. Jur. 9.

10535. Persons who cannot be witnesses.

Under this section, subdivision 4, evidence of threats made by the agent of a corporation (since deceased) for the purpose of procuring defendant to execute a promissory note and a mortgage securing it was properly admitted, its admissibility having been addressed to the discretion of the trial court where without such evidence defendant could not have proven or made out a *prima facie* case of menace. *Averill Machinery Co. v. Taylor et al.*, 70 Mont. 70, 223 Pac. 918.

In an action against an administrator brought under section 9076, for damages for the wrongful killing of plaintiff's husband by defendant's intestate, where plaintiff was the only surviving witness and her testimony was indispensable to recovery, the court properly permitted her to testify under the exception provided by this section. *Anderson et al. v. Wirkman*, 67 Mont. 176, 215 Pac. 224.

Under this section, as amended by chapter 41, L. 1913, testimony of plaintiff concerning transactions and oral

communications had with the deceased agent of a corporation was inadmissible in an action against the corporation. *Marcellus v. Wright et al.*, 65 Mont. 580, 212 Pac. 299.

Under this section, declaring that parties to an action against an executor or administrator upon a demand against the estate of a deceased person are incompetent to testify to transactions or oral communications between the witness and the deceased, except when it appears that without the testimony injustice will be done, the power to admit or reject such testimony is lodged in the sound discretion of the trial court, which cannot be too carefully exercised, and when admitted it must be viewed with caution. *Marcellus v. Wright et al.*, 65 Mont. 580, 212 Pac. 299.

Under this section, determination of the question whether testimony with relation to acts or conversations had with a deceased agent of a corporation is admissible or not rests in the discretion of the

trial court. *Mosback v. Smith Brothers Sheep Co.*, 65 Mont. 42, 210 Pac. 910.

This section as amended by chapter 41, L. 1913, does not exclude the testimony of the beneficiary under an insurance policy, in an action to recover the amount of the policy, to a conversation with the insured before his death. *New York Life Ins. Co. v. Mason*, 272 Fed. 28.

Cited in *Wood v. Ferguson et al.*, 71 Mont. 540, 548, 230 Pac. 592.

This and section 10536 were cited in *Wilson v. Wilson et al.*, 64 Mont. 533, 544, 210 Pac. 896.

Mental condition as affecting competency of witness, note, 26 A. L. R. 1491.

What constitutes claim against estate within statute disqualifying witness, note, 41 A. L. R. 1044.

For text treatment of this subject see vol. 6 Cal. Jur. 831; vol. 10 Cal. Jur. 909; vol. 11 Cal. Jur. 520, 804-822, 1075; vol. 27 Cal. Jur. 36, 37, 42.

10536. Persons in certain relations cannot be examined. 1. A husband cannot be examined for or against his wife without her consent; nor a wife for or against her husband without his consent; nor can either, during the marriage or afterward, be, without the consent of the other, examined as to any communication made by one to the other during the marriage; but this exception does not apply to a civil action or proceeding by one against the other, nor to a criminal action or proceeding for a crime committed by one against the other; or in an action brought by husband or wife against another person for the alienation of the affections of either husband or wife or in an action for damages against another person for adultery committed by either husband or wife.

2. An attorney cannot, without the consent of his client, be examined as to any communication made by the client to him, or his advice given thereon in the course of professional employment.

3. A clergyman or priest cannot, without the consent of the person making the confession, be examined as to any confession made to him in his professional character in the course of discipline enjoined by the church to which he belongs.

4. A licensed physician or surgeon cannot, without the consent of his patient, be examined in a civil action as to any information acquired in attending the patient, which was necessary to enable him to prescribe or act for the patient.

5. A public officer cannot be examined as to communications made to him in official confidence, when the public interests would suffer by the disclosure.

Amd. Sec. 1, Ch. 83, L. 1925.

To render statements made to a physician by his patient privileged under this section, they must have related to the particular injury or disease and been necessary to enable the former to properly prescribe for the latter or act in

his professional capacity. *Garrett v. City of Butte*, 69 Mont. 214, 221 Pac. 537.

A statement made to a staff physician at a hospital by plaintiff in an action for personal injuries sustained by a fall on an icy sidewalk immediately after the accident, that she fell at a place

different from the one alleged in the complaint, was not privileged and rejection of an offer of proof to that effect was reversible error. *Garrett v. City of Butte*, 69 Mont. 214, 221 Pac. 537.

This section, forbidding testimony by a wife without her husband's consent, as to any communications made by the one to the other during the marriage, though not limited expressly to confidential communications, should be construed as applying only to such communications, since there is no public policy excluding such testimony further than necessary to guard the marital relation. *New York Life Ins. Co. v. Mason*, 272 Fed. 28.

In an action on a life insurance policy, brought by the wife of the insured, in which the defense was suicide, testimony by the wife to conversations with her husband shortly before and immediately after the shooting showing that the husband was not contemplating suicide and that the shooting was accidental, are not "confidential communications" and were not inadmissible under this section. *New York Life Ins. Co. v. Mason*, 272 Fed. 28.

Cited in *State v. Yegen*, 74 Mont. 126, 130, 238 Pac. 603; *State v. Newman*, 66 Mont. 180, 196, 213 Pac. 805; *Wilson v. Wilson et al.*, 64 Mont. 533, 544, 210 Pac. 896; *Simonsen v. Barth et al.*, 64 Mont. 95, 100, 208 Pac. 938.

Privilege of communication made to public officers, notes, 9 A. L. R. 1099; 16 A. L. R. 1263.

Competency of hospital attendant or physician to testify as to condition of patient, note, 22 A. L. R. 1217.

Family matters or affairs incidentally learned by physician while professionally attending patient as privileged, note, 24 A. L. R. 1202.

Privilege of communications by or to nurse or attendant, note, 39 A. L. R. 1421.

Evidence in suit for alienation of affections of confidential communications between husband and wife, note, 36 A. L. R. 1068.

For text treatment of this subject see vol. 9 Cal. Jur. 736; vol. 17 Cal. Jur. 762; vol. 21 Cal. Jur. 916; vol. 26 Cal. Jur. 753; vol. 27 Cal. Jur. 44 et seq.

CHAPTER 5.

WRITINGS—PUBLIC WRITINGS.

10540. Public writings defined.

Reports made to the state bank examiner by his deputies as to its financial condition, not verified or signed, are not admissible in evidence as "public writ-

ings," in the absence of proof of their contents. *State v. Yegen*, 74 Mont. 126, 238 Pac. 603.

10541. All others private.

Cited in *State v. Yegen*, 74 Mont. 126, 129, 238 Pac. 603.

10543. Public officer bound to give copies.

Cited in *State v. Rouleau et al.*, 68 Mont. 529, 541, 219 Pac. 1096.

10544. Four kinds of public writings.

Cited in *State v. Yegen*, 74 Mont. 126, 129, 238 Pac. 603.

10545. Laws, written or unwritten.

Cited in *State ex rel. La Point v. District Court*, 69 Mont. 29, 34, 220 Pac. 88.

10549. Unwritten law defined.

Cited in *State ex rel. La Point v. District Court*, 69 Mont. 29, 34, 220 Pac. 88.

10555. Record—How authenticated as evidence.

Applied with section 10040 in holding that an attestation by the clerk of the probate court of another state unaccompanied by a certificate of the judge "that the attestation is in due form" is insufficient to entitle papers to be admitted in

evidence in this state. *Henderson et al. v. Daniels*, 62 Mont. 363, 205 Pac. 964.

For text treatment of this subject see vol. 15 Cal. Jur. 292-297; vol. 22 Cal. Jur. 639.

10558. Effect of a judgment or final order upon rights in various cases.

Cited in *Hoppin v. Long*, 74 Mont. 558, 578, 584, 241 Pac. 636; *Springhorn v. Dirks et al.*, 72 Mont. 121, 129, 231 Pac. 912; *Independent M. & C. Co. v. Aetna L. I. Co.*, 68 Mont. 152, 159, 216 Pac.

1109; *Sweeney v. City of Butte*, 64 Mont. 230, 236, 208 Pac. 943; as section 7914, Revised Codes, in *In re Smith's Estate*, 60 Mont. 276, 296, 199 Pac. 696.

10561. What deemed adjudged in a judgment.

Mandamus, being an action at law rather than in equity, judgment therein is conclusive as to all of the relator's rights properly involved therein, whether asserted or not. *State ex rel. Golden Valley County v. District Court et al.*, 75 Mont. 122, 242 Pac. 421.

Cited in *Solberg v. Sunburst Oil & Gas Co.*, 76 Mont. 254, 265, 246 Pac. 168;

Hoppin v. Long, 74 Mont. 558, 584, 241 Pac. 636; *Solberg v. Sunburst Oil & Gas Co.*, 73 Mont. 94, 102, 235 Pac. 761; *Wallace et al. v. Goldberg et al.*, 72 Mont. 234, 241, 231 Pac. 56; as section 7917, Revised Codes, in *Sweeney v. City of Butte*, 64 Mont. 230, 236, 208 Pac. 943; *In re Smith's Estate*, 60 Mont. 276, 297, 199 Pac. 696.

10563. Record of another state—Its effect.

Under this section, providing that the authority of an executor or administrator does not extend beyond the territorial limits of the government under which he was appointed, an administrator appointed in another state cannot maintain an action in the courts of this state in his representative capacity. *Lefebure et al. v. Baker et al.*, 69 Mont. 193, 220 Pac. 1111.

Cited in *Henderson et al. v. Daniels*, 62 Mont. 363, 372, 205 Fed. 964.

Public policy or statute of forum as ground for refusal to entertain an action

upon a judgment rendered in another state, notes, 4 A. L. R. 968; 10 A. L. R. 719; 24 A. L. R. 1437.

Extraterritorial effect of provision in decree of divorce as to custody of child, note, 20 A. L. R. 815.

Divorce decree in one state as affecting previous order or decree for separate maintenance in another, note, 42 A. L. R. 1375.

Installment decree for alimony as within full faith and credit provision, notes, 41 A. L. R. 1419; 46 A. L. R. 1200.

For text treatment of this subject see vol. 13 Cal. Jur. 210; vol. 15 Cal. Jur. 240.

10568. Manner of proving other official documents.

Cited in *State v. Yegen*, 74 Mont. 126, 130, 135, 238 Pac. 603; as section 7924,

Revised Codes, in *Steiner v. McMillan*, 59 Mont. 30, 37, 195 Pac. 836.

10569. Public record of private writing evidence.

Cited in *Angell v. Lewistown State Bank et al.*, 72 Mont. 345, 350, 232 Pac. 90.

10570. Entries in official books prima facie evidence.

Cited in *State v. Yegen*, 74 Mont. 126, 129, 238 Pac. 603.

10573. Contents of other official certificates.

Cited in *State v. Rouleau et al.*, 68 Mont. 529, 541, 219 Pac. 1096.

CHAPTER 6.

PRIVATE WRITINGS.

10581. Execution of an instrument defined.

Cited in *Springhorn v. Springer et al.*, 75 Mont. 294, 301, 243 Pac. 803.

10585. Original writing to be proved or accounted for.

Refusal to permit a carbon copy of a livestock shipping contract to be introduced in evidence was proper under this section, where the copy was incomplete in that the signature of the shipper was missing therefrom, the carbon sheet having been so placed as not to cover the space left for said signature, which omission had been later supplied by defendant's agent writing in the name of the

plaintiff, and where it appeared that the original was in defendant's possession. *Rogness v. Northern Pacific Ry. Co.*, 59 Mont. 373, 196 Pac. 989.

Secondary evidence as to execution and contents of will lost before testator's death, note, 34 A. L. R. 1308, 1312.

For text treatment of this subject see vol. 16 Cal. Jur. 698 et seq.

10588. Writings—How proved.

The common-law rule that where the execution of a writing has been attested the party desiring to prove its execution must, before using other evidence, either produce the attester as a witness or show that his testimony is not available, was not abrogated by this section, and therefore where one of two witnesses who had attested a writing was available at the time of the trial and the absence of the other was not explained, the court

properly denied permission to introduce the testimony of an expert in handwriting to show that the signature attached thereto was the signature of the person alleged to have executed it. *Angell v. Lewistown State Bank et al.*, 72 Mont. 345, 232 Pac. 90.

For text treatment of this subject see vol. 10 Cal. Jur. 870.

10589. Relating to proving the execution of a writing by certain witnesses.

Rep. Sec. 1, Ch. 154, L. 1925.

Cited in *Angell v. Lewistown State Bank et al.*, 72 Mont. 345, 353, 232 Pac. 90.

10591. Evidence of handwriting.

Cited in *In re Miller's Estate*, 71 Mont. 330, 340, 229 Pac. 851.

10592. Evidence of handwriting by comparison.

The jury is not bound by the testimony of experts on handwriting and the court in directing a verdict and thus in effect instructing the jury that they must accept such testimony as true committed error. *Grosfield v. First Nat. Bank*, 73 Mont. 219, 236 Pac. 250.

The provision of this section, that a witness may give evidence respecting handwriting by comparison with writings admitted or treated as genuine by the party against whom the evidence is of-

fered has reference to an expert witness only and therefore it was error to permit nonexperts to give their opinions as to the genuineness of the handwriting of a purported will, based upon comparison with other writings admitted to have been genuine. *In re Miller's Estate*, 71 Mont. 330, 229 Pac. 851.

For text treatment of this subject see vol. 8 Cal. Jur. 141; vol. 10 Cal. Jur. 871, 1007.

10596. Private writings—How proved.

Under this section and section 10598, any private writing except a will, which is acknowledged or proved and certified as required by statute, carries with it the evidence of its due execution and is admissible without further proof thereof.

Angell v. Lewistown State Bank et al., 72 Mont. 345, 232 Pac. 90.

For text treatment of this subject see vol. 1 Cal. Jur. 231, 268; vol. 10 Cal. Jur. 869.

10597. Removal of public records.

Cited in *Angell v. Lewistown State Bank et al.*, 72 Mont. 345, 350, 232 Pac. 90.

10598. Certified copies of records as evidence.

Under this section, and 10596 any private writing (except a will) which is acknowledged or proved and certified as required by statute carries with it the evidence of its due execution and is admissible without further proof thereof. *Angell v. Lewistown State Bank et al*, 72 Mont. 345, 232 Pac. 90.

Cited in *Springhorn v. Springer et al*, 75 Mont. 294, 301, 243 Pac. 803.

For text treatment of this subject see vol. 1 Cal. Jur. 232, 294; vol. 9 Cal. Jur. 385; vol. 10 Cal. Jur. 879; vol. 22 Cal. Jur. 636-644.

CHAPTER 8.**INDIRECT EVIDENCE—INFERENCES AND PRESUMPTIONS.****10600. Indirect evidence classified.**

Sections 10600-10604 were cited in *California Packing Corp. v. McClintock*, 75 Mont. 72, 76, 241 Pac. 1077; *Fisher v. Butte Electric Ry. Co. et al*, 72 Mont. 594, 604, 235 Pac. 330; *State ex rel*

Brown v. District Court, 72 Mont. 213, 218, 232 Pac. 201; *Anderson et al. v. Workman*, 67 Mont. 176, 186, 215 Pac. 224.

10601. Inference defined.

While actionable negligence may be established by indirect evidence, one inference cannot be drawn from another inference or presumption and a presumption cannot rest upon an inference. *Fisher v. Butte Electric Ry. Co. et al*, 72 Mont. 594, 235 Pac. 330.

Cited in *First Nat. Bank v. Robke et al*, 72 Mont. 527, 532, 235 Pac. 327.

For text treatment of this subject see vol. 10 Cal. Jur. 735.

10602. Presumption defined.

A presumption, being a deduction which the law expressly directs to be made from particular facts, cannot be based upon a further presumption. *First Nat. Bank of Glendive v. Sorenson*, 65 Mont. 1, 210 Pac. 900.

Cited in *State v. Daly*, 77 Mont. 387, 390, 250 Pac. 976; *Doorly v. Goodman*, 71 Mont. 529, 536, 230 Pac. 779.

For text treatment of this subject see vol. 10 Cal. Jur. 735.

10603. When an inference arises.

Cited in *First Nat. Bank v. Robke et al*, 72 Mont. 527, 532, 235 Pac. 327.

10604. Presumptions may be controverted, when.

Sections 10604-10606 were cited in *Doorly v. Goodman*, 71 Mont. 529, 536, 230 Pac. 779; *Gilliland v. Palatine Ins.*

Co., Ltd., 59 Mont. 267, 270, 196 Pac. 151.

10605. Specification of conclusive presumptions.

Elements of equitable estoppel stated in *Waddell v. School Dist. No. 2*, 74 Mont. 91, 238 Pac. 884.

Cited in *Hoppin v. Long*, 74 Mont. 558,

584, 241 Pac. 636; *Wray v. Great Falls Paper Co.*, 72 Mont. 461, 466, 234 Pac. 486.

10606. All other presumptions may be controverted.

Where one places a fence on lands of another, without an agreement permitting him to do so, it belongs to the owner of the land unless he chooses to require him to remove it, the presumption, disputable in nature, being that one in possession of land is also the owner of the fixtures

thereon. *Schmuck v. Beck*, 72 Mont. 606, 234 Pac. 477.

The presumption declared by subdivision 11 of this section, to the effect that "things which a person possesses are owned by him" has reference to the present and not to the past; therefore an

offered instruction in an action in conversion that if plaintiff's husband was in possession of the property in question prior to the time it was attached, the law presumes that he and not plaintiff was its owner, was properly refused. *Wray v. Great Falls Paper Co.*, 72 Mont. 461, 234 Pac. 486.

That a bill of exceptions was presented, settled and signed within the time provided by statute must be made to appear affirmatively in the record and may not be supplied by the presumption that the trial court in settling and signing it was acting in the lawful exercise of its jurisdiction. *O'Donnell v. City of Butte*, 72 Mont. 449, 235 Pac. 707.

The burden of establishing want of probable cause for making an arrest and seizure under the liquor law without a warrant is upon him who asserts it. *State ex rel. Hansen v. District Court*, 72 Mont. 245, 233 Pac. 126.

The presumption that a person takes ordinary care of his own concerns is a disputable one and does not apply where the surrounding facts and circumstances show the contrary. *Roberts v. Chicago, M. & St. P. Ry. Co.*, 67 Mont. 472, 216 Pac. 332.

Plaintiff in an action for malicious prosecution was not required to prove that the complaint against him was actually filed, where defendant admitted that he subscribed and swore to it, in view of the presumption arising, upon proof that a warrant was issued and proceedings had under it, that official duty was regularly performed and that the complaint was duly filed. *Hawley v. Richardson*, 60 Mont. 118, 198 Pac. 450.

Cited in *Rohr v. Stanton Trust & Sav. Bank*, 76 Mont. 248, 251, 245 Pac. 947; *Anderson v. Border et al.*, 75 Mont. 516, 525, 244 Pac. 494; *State ex rel. Urton v. American Bank & Trust Co.*, 75 Mont. 369, 377, 243 Pac. 1093; *Reynolds v. Gladys Belle Oil Co.*, 75 Mont. 332, 346, 243 Pac. 576; *Hale et al. v. Belgrade Co., Ltd.*, 75 Mont. 99, 111, 242 Pac. 425; *California Packing Corp. v. McClintock*, 75 Mont. 72, 76, 241 Pac. 1077; *State ex rel. Rankin v. Banking Corporation*, 74 Mont. 491, 506, 241 Pac. 626; *Rowley v. Mullen*, 74 Mont. 283, 289, 240 Pac. 374; *State ex rel. Toomey v. Board of Examiners*, 74 Mont. 1, 17, 238 Pac. 316; *In re Claims of Hyde*, 73 Mont. 363, 370, 236 Pac. 248; *Edwards et al. v. Muri*, 73 Mont. 339, 353, 237 Pac. 209; *Gardiner v. Eclipse Grocery Co.*, 72 Mont. 540, 550, 234 Pac. 490; *State ex rel. Brown v. District Court*, 72 Mont. 213, 218, 232 Pac. 201; *State Bank of Outlook v. Sheridan County*, 72 Mont. 1, 5, 230 Pac. 1097; *In re Shaffer*, 70 Mont. 609, 613,

227 Pac. 37; *Jersey et al. v. Peacock et al.*, 70 Mont. 46, 48, 223 Pac. 903; *Bury v. Bury et al.*, 69 Mont. 570, 576, 223 Pac. 502; *State v. Tesla et al.*, 69 Mont. 503, 508, 223 Pac. 107; *Hawaiian Pineapple Co. v. Browne*, 69 Mont. 140, 147, 220 Pac. 1114; *Healy v. Ginoff et al.*, 69 Mont. 116, 132, 220 Pac. 539; *State v. Rouleau et al.*, 68 Mont. 529, 542, 219 Pac. 1096; *Mayger v. St. Louis Mining etc. Co.*, 68 Mont. 492, 502, 219 Pac. 1102; *O'Brien v. School District No. 1*, 68 Mont. 432, 435, 219 Pac. 1113; *Rodda v. Best et al.*, 68 Mont. 205, 217, 217 Pac. 669; *Rosenfeld v. Jakways et al.*, 67 Mont. 558, 564, 216 Pac. 776; *Roberts v. Chicago M. & St. P. Ry. Co.*, 67 Mont. 472, 478, 216 Pac. 332; *Anderson et al. v. Wirkman*, 67 Mont. 176, 186, 215 Pac. 224; *McConnell v. Blackley*, 66 Mont. 510, 514, 214 Pac. 64; *Dilts v. Brooks et al.*, 66 Mont. 346, 349, 213 Pac. 600; *Saint et al. v. Beal*, 66 Mont. 292, 297, 213 Pac. 248; *State v. Newman*, 66 Mont. 180, 194, 213 Pac. 805; *State ex rel. Moore v. Patch et al.*, 65 Mont. 218, 225, 211 Pac. 202; *State ex rel. Redman v. Meyers*, 65 Mont. 124, 126, 210 Pac. 1064; *State v. Reed*, 65 Mont. 51, 61, 210 Pac. 756; *Grant v. Nihill*, 64 Mont. 420, 436, 210 Pac. 914; *Clark v. Clark*, 64 Mont. 386, 393, 210 Pac. 93; *Park v. Grady*, 62 Mont. 246, 251, 204 Pac. 382; as section 7962, Revised Codes, in *Marcellus v. Wright et al.*, 61 Mont. 274, 288, 202 Pac. 381; *Doney v. Northern Pacific Ry. Co. et al.*, 60 Mont. 209, 229, 199 Pac. 432; *Osterholm v. Butte Electric Ry. Co. et al.*, 60 Mont. 193, 202, 199 Pac. 252; *Stack v. Coyle*, 59 Mont. 444, 197 Pac. 747; *State v. Livermore*, 59 Mont. 362, 364, 196 Pac. 977.

Circumstances tending to negative negligence by defendant as affecting rule of res ipsa loquitur, note, 22 A. L. R. 1471.

Presumption of innocence as evidence, notes, 34 A. L. R. 938; 47 A. L. R. 968.

Presumption of continuance of marriage relation, note, 34 A. L. R. 482.

Rebuttal of presumption of death from absence by evidence that absentee was fugitive from justice, note, 44 A. L. R. 1488.

For text treatment of this subject see vol. 4 Cal. Jur. 996; vol. 7 Cal. Jur. 583, 612; vol. 8 Cal. Jur. 23-28, 340, 938-946; vol. 10 Cal. Jur. 748-756, 761-782, 877, 1050, 1139; vol. 11 Cal. Jur. 987; vol. 12 Cal. Jur. 816; vol. 13 Cal. Jur. 920; vol. 15 Cal. Jur. 64, 96, 211, 724; vol. 16 Cal. Jur. 930; vol. 19 Cal. Jur. 527, 703, 1035-1048; vol. 21 Cal. Jur. 651, 898; vol. 22 Cal. Jur. 583; vol. 24 Cal. Jur. 163, 499; vol. 26 Cal. Jur. 821; vol. 27 Cal. Jur. 297.

CHAPTER 9.

INDISPUTABLE EVIDENCE—EVIDENCE OF AGREEMENTS NOT IN WRITING—CONCLUSIVE AND UNANSWERABLE EVIDENCE.

10611. Transfer of real property to be in writing.

Cited as section 7967, Revised Codes, in *Wells v. Waddell*, 59 Mont. 436, 441, 196 Pac. 1000.

10613. Agreement not in writing—When invalid.

Where an oral agreement to adopt was fully performed by the mother upon surrender of the child, and thereafter by the child upon the death of the adopting parties, it was taken out of the statute of frauds by full performance. *Gravelin v. Porier et al.*, 77 Mont. 260, 250 Pac. 823.

Unless a contract void under the statute of frauds because not in writing is removed from the statute by an exception, it is not only unenforceable, but evidence of it may not be received. *McIntyre et al. v. Dawes*, 71 Mont. 367, 229 Pac. 846.

Cited in *Doorly v. Goodman*, 71 Mont.

529, 534, 230 Pac. 779; *Dreidlein v. Manger*, 69 Mont. 155, 162, 220 Pac. 1107.

When is promise made in consideration of marriage within statute of frauds, notes, 10 A. L. R. 321; 21 A. L. R. 311.

Oral contract for year's service as within statute of frauds, note, 27 A. L. R. 663.

Check or note as memorandum satisfying statute of frauds, note, 20 A. L. R. 363.

Agent of undisclosed principal signing contract as satisfying statute of frauds, note, 23 A. L. R. 932.

For text treatment of this subject see vol. 12 Cal. Jur. 856 et seq.

CHAPTER 10.

PRODUCTION OF EVIDENCE—BY WHOM PROCURED.

10616. Evidence to be produced, by whom.

Under this section, the party asserting a right in any case has the burden of proving each of the material allegations of his cause of action. *Tucker v. Missoula Light & Ry. Co.*, 77 Mont. 91, 250 Pac. 11.

Cited in *Malano v. Bressan*, 76 Mont.

366, 373, 245 Pac. 871; *Doering v. Selby et al.*, 75 Mont. 416, 421, 244 Pac. 485; *Connolly v. Schlueter Bros. et al.*, 69 Mont. 65, 69, 220 Pac. 103.

For text treatment of this subject see vol. 10 Cal. Jur. 786.

CHAPTER 11.

PRODUCTION OF EVIDENCE—MEANS OF PRODUCTION—SUBPOENA.

10618. Subpoena for witness defined.

Cited in *Helena Adjustment Co. v. Clafin*, 75 Mont. 317, 326, 243 Pac. 1063.

10622. When a witness is compelled to attend.

A material witness who resided outside the county in which the case was tried, at a distance greater than thirty miles and voluntarily attended the trial at the request of the prevailing party and had to wait for about a week before he was required to testify, on account of congestion of court business, was entitled to per diem for the whole time he was in

attendance, and not only for the day on which he gave his testimony, as well as to mileage, the service of a subpoena not being a prerequisite to their allowance. *Helena Adjustment Co. v. Clafin*, 75 Mont. 317, 243 Pac. 1063.

For text treatment of this subject see vol. 27 Cal. Jur. 12.

10623. Person present compelled to testify.

Cited in *Helena Adjustment Co. v. Clafin*, 75 Mont. 317, 326, 243 Pac. 1063.

10624. Disobedience—How punished.

Cited in *State ex rel. Bacorn v. District Court*, 73 Mont. 297, 302, 236 Pac. 553.

CHAPTER 12.

PRODUCTION OF EVIDENCE—MANNER OF PRODUCTION—BY AFFIDAVIT,
DEPOSITION AND EXAMINATION.**10632. Affidavit defined.**

Sections 10632, 10633 were cited in *State v. English*, 71 Mont. 343, 346, 229 Pac. 727; *Thedin et al. v. First Nat. Bank of Savage*, 67 Mont. 65, 71, 214 Pac. 956.

CHAPTER 13.

AFFIDAVITS.

10636. Affidavits—For what purpose may be used.

Cited in *State ex rel. Hansen v. District Court*, 72 Mont. 245, 249, 233 Pac. 126; *State ex rel. Merrill v. District Court*, 72 Mont. 77, 81, 231 Pac. 1107.

CHAPTER 14.

DEPOSITIONS—HOW TAKEN WITHOUT AND WITHIN THE STATE.

10645. In the state—When taken.

Before a party to a civil action can subject his adversary to a contempt proceeding for refusal to answer as a witness under this section, authorizing his deposition to be taken prior to trial, the questions must have been pertinent and legal, hence the affidavit charging contempt must so state and must also disclose that, *prima facie*, he has a cause

of action and that the witness is in possession of facts pertinent to the matter in issue which he has refused to divulge after being served with a subpoena. *State ex rel. Bacorn v. District Court*, 73 Mont. 297, 236 Pac. 553.

For text treatment of this subject see vol. 9 Cal. Jur. 402.

CHAPTER 15.

GENERAL RULES OF EXAMINATION.

10660. Witness not under examination may be excluded.

The matter of excluding witnesses from the courtroom is one addressed to the sound discretion of the trial court and where no prejudice is shown its refusal to exclude will not be disturbed on appeal; and generally, officers such as members of the sheriff's force are exempted from the rule permitting exclusion on the trial of a criminal case. *State v. Walsh*, 72 Mont. 110, 232 Pac. 194.

Refusal to permit a witness for defendant in a criminal prosecution to testify on a matter material to his defense,

on the ground that the witness had violated an order of court excluding witnesses during the taking of testimony, is reversible error where the witness was ignorant of the rule and neither defendant nor his counsel was responsible for or knew of his presence in the courtroom. *State v. Johnson*, 62 Mont. 503, 205 Pac. 661.

For text treatment of this subject see vol. 8 Cal. Jur. 224; vol. 27 Cal. Jur. 63.

10661. Court may control mode of interrogation.

Where on cross-examination of a witness every material and proper question was answered and the ground upon every point covered fully, the district court may, under this section, stop the produc-

tion of further evidence upon the subject. *State v. Cassill et al.*, 70 Mont. 433, 227 Pac. 49.

Cited in *State v. McConville*, 64 Mont. 302, 306, 209 Pac. 987.

Right to limit number of witnesses, notes, 21 A. L. R. 335; 48 A. L. R. 947.

For text treatment of this subject see vol. 27 Cal. Jur. 62, 65.

10664. When witness may refresh memory from notes.

Refusal to permit a witness to refresh his memory from a book of accounts was proper, under this section, where it appeared that the entries had been copied from other memorandum-books, that he did not know when nor by whom some of them were made, but knew that a portion of them was copied after the dates of the original entries and that some of them might not be exact as to dates.

McLean v. Rice, 63 Mont. 556, 208 Pac. 252.

Cited as section 8020, Revised Codes, in State v. Bennett, 60 Mont. 355, 360, 199 Pac. 276.

For text treatment of this subject see vol. 10 Cal. Jur. 891; vol. 27 Cal. Jur. 86 et seq.

10665. Cross-examination, as to what.

Where plaintiff in her case in chief in an action on a promissory note did not go into the matter of consideration, defendant was improperly permitted on cross-examination to propound questions with relation thereto, under this section, making cross-examination proper only as to facts stated in the witness' direct examination or connected therewith. Alley v. Butte & Western Mining Co., 77 Mont. 477, 251 Pac. 517.

While the statute with relation to cross-examination of witnesses should be liberally construed and the extent to which a witness may be cross-examined with respect to collateral matters is largely within the discretion of the trial court, where the evidence sought to be elicited is clearly immaterial for any purpose, the court may properly exclude it. State v. McClain et al., 76 Mont. 351, 246 Pac. 956.

The provision of this section, that a party may cross-examine a witness of his opponent on any facts stated in his direct examination or connected therewith, has reference to material matters; hence where plaintiff, though relieved by admissions in the answer from offering any evidence, did testify to immaterial mat-

ters, refusal to permit defendant to cross-examine him was not an abuse of discretion. Courtney v. Gordon, 74 Mont. 408, 241 Pac. 233.

In a prosecution for permitting gambling to be conducted on the premises of defendant, where his wife had testified that while certain games were permitted to be played there never had been any gambling permitted, cross-examination as to the manner in which the games were conducted and as to her knowledge of what took place, was proper. State v. Mott, 72 Mont. 306, 233 Pac. 602.

Where matters inquired into on cross-examination are relevant to the subject matter of the examination in chief and of informative value to the jury upon the question under consideration, the cross-examination is proper. McCarthy v. Anaconda Copper Mining Co., 70 Mont. 309, 225 Pac. 391.

Cited in Downey et al. v. Northern Pacific Ry. Co., 72 Mont. 166, 180, 232 Pac. 531; State v. Richardson, 63 Mont. 322, 329, 207 Pac. 124.

For text treatment of this subject see vol. 27 Cal. Jur. 92 et seq.

10666. Party producing witness, how far may impeach his credit.

A letter written by the president of a corporation to its manager urging the latter to borrow money for the use of the company, on the strength of which he obtained funds from his wife on a corporation note, was admissible as tending to show that such officer, called by plaintiff as a witness and who on cross-examination had testified that the company was in good financial condition and needed no money, had made statements inconsistent with such testimony, and was therefore not open to the objection that plaintiff attempted to impeach her own witness. Alley v. Butte & Western Mining Co., 77 Mont. 477, 251 Pac. 517.

Before a party producing a witness may contradict his testimony, he must make a showing that he was misled or taken by surprise by what the witness said. Dick v. King, 73 Mont. 456, 236 Pac. 1093.

Before a party may contradict his own witness by showing inconsistent statements, he must, under this section, make a showing that he was misled or taken by surprise. State v. Richardson, 63 Mont. 322, 207 Pac. 124.

Impeachment of witness by expert evidence to show moral or mental defects, note, 15 A. L. R. 932.

Impeachment of witness by showing use of drugs, note, 15 A. L. R. 912.

Admissibility of pleadings for purposes of impeachment, note, 14 A. L. R. 103.

For text treatment of this subject see vol. 27 Cal. Jur. 170 et seq.

10667. Witness, how examined—When re-examined.

Cited in *State v. Mumford*, 69 Mont. 424, 433, 222 Pac. 447.

10668. How impeached.

Cited in *State v. O'Neill*, 76 Mont. 526, 535, 248 Pac. 215; *State v. Kacar*, 74 Mont. 269, 282, 240 Pac. 365; *State v. Jackson*, 71 Mont. 421, 433, 230 Pac.

370; as section 8024, Revised Codes, in *State v. Stein*, 60 Mont. 441, 446, 199 Pac. 278.

10669. Same—By evidence of declarations.

Where a witness who had been asked on cross-examination whether at a previous trial he had not given certain testimony replied that he did not remember, exclusion of an offer to prove on rebuttal by a witness who had heard him testify on that occasion that he did so testify

was error under this section. *Wingate v. Davis et al.*, 77 Mont. 572, 252 Pac. 307.

Cited in *State v. Kacar*, 74 Mont. 269, 282, 240 Pac. 365; *State v. Richardson*, 63 Mont. 322, 330, 207 Pac. 124.

For text treatment of this subject see vol. 27 Cal. Jur. 117, 151-169.

10670. Evidence of good character—When allowed.

A witness for defendant gave evidence tending to establish an alibi. The state in rebuttal called witnesses who testified that the reputation of the alibi witness was bad. On surrebuttal the defendant sought to introduce testimony that the general reputation of his witness was good; the court declined to hear it.

Held reversible error. *State v. Jackson*, 71 Mont. 421, 230 Pac. 370.

Admissibility of evidence of good reputation for truth and veracity of unimpeached witness, notes, 15 A. L. R. 1065; 33 A. L. R. 1220.

For text treatment of this subject see vol. 10 Cal. Jur. 836; vol. 27 Cal. Jur. 176.

CHAPTER 16.

EFFECT OF EVIDENCE.

10672. Jury judges of effect of evidence, but to be instructed on certain points.

That degree of proof in a criminal case which produces conviction in an unprejudiced mind is denominated "moral certainty" and "moral certainty" and the phrase "beyond a reasonable doubt" as employed in this section providing that conviction can be secured only upon evidence which establishes guilt beyond a reasonable doubt, are synonymous. *State v. Mun*, 76 Mont. 278, 246 Pac. 257.

An instruction that where a witness has wilfully testified falsely as to a material matter in the case, the jury may disregard any and all of his testimony, except in so far as it was corroborated by other credible evidence, held erroneous, the statute going no further than to provide that the jury may look with distrust upon the testimony of any witness found to have so testified, making no exception in favor of one who has been corroborated.

Vande Veegaete v. Vande Veegaete, 75 Mont. 52, 243 Pac. 1082; *State v. Belland*, 59 Mont. 540, 197 Pac. 841.

The propriety of submitting instructions to the jury based upon the rules prescribed by this section, for weighing evidence, is a matter addressed to the trial court, and its determination is subject to review only for abuse of discretion; ordinarily an instruction in the words of section 10508 is sufficient. *State v. Sedlacek*, 74 Mont. 201, 202, 239 Pac. 1002.

Evidence of oral admissions must be viewed with caution, especially so where the party alleged to have made the admission is dead. *Humble v. St. John et al.*, 72 Mont. 519, 234 Pac. 475.

An instruction commenting on the manner in which the jury should view the evidence of detectives employed for

PENAL CODE.**PART I.****Crimes and Punishments.****CHAPTER 1.****DEFINITIONS AND PRELIMINARY PROVISIONS.**

10713. Certain terms defined in the senses in which they are used in this code.

Cited in *Klind v. Valley County Bank of Hinsdale*, 69 Mont. 386, 399, 222 Pac. 439.

10715. Civil remedies preserved.

Cited in *State ex rel. Stewart v. District Court*, 77 Mont. 361, 372, 49 A. L. R. 627, 251 Pac. 137.

10721. Crime and public offense defined.

Cited in *State v. Gardner*, 77 Mont. 8, 14, 249 Pac. 574; as section 8107, *Revised Codes*, in *State ex rel. Bullock v. District Court*, 62 Mont. 600, 602, 205 Pac. 955; *State v. District Court*, 61 Mont. 558, 562, 202 Pac. 756.

10722. Crimes, how divided.

Cited in *State ex rel. Foot v. District Court et al.*, 72 Mont. 374, 378, 233 Pac. 957.

10723. Felony and misdemeanor defined.

Where an offense which is not divisible into degrees and does not include a lesser offense is punishable either as a misdemeanor or as a felony in the discretion of the court or jury, it is the possible sentence which determines the grade of the crime; hence it is to be deemed a felony up to the time of judgment, where-
upon, if the punishment inflicted be other than imprisonment in the state prison, it is to be considered a misdemeanor for all purposes, under this section. *State v. Atlas*, 75 Mont. 547, 244 Pac. 477.

For text treatment of this subject see vol. 7 Cal. Jur. 870, 871.

10727. Intent, how manifested, and who considered of sound mind.

Cited in *Sommerville v. Greenhood*, 65 Mont. 101, 114, 210 Pac. 1048.

10728. Drunkenness no excuse for crime—When it may be considered—How insanity must be proven. 1. No act committed by a person while in a state of voluntary intoxication is less criminal by his being in said condition. But, whenever the actual existence of any particular purpose, motive, or intent, is a necessary element to constitute any particular species or degree of crime, the jury may take into consideration the fact that the accused was intoxicated at the time, in determining the purpose, motive or intent with which he committed the act.

2. When the commission of the act charged as a crime is proven, and the defense sought to be established is the insanity of the defendant, the

same must be proven by the defendant by a preponderance of the testimony; provided, however, that said defendant may have his sanity or insanity determined in the manner provided by law, by requesting the district court to determine the same, at any time before the jury is obtained.

Amd. Sec. 1, Ch. 87, L. 1925.

Under this section as amended, defendant charged with homicide has the burden of proving his defense of insanity by a preponderance of the testimony, and an instruction that the state was required to prove beyond a reasonable doubt that he was sane was erroneous. *State v. Vetere*, 76 Mont. 574, 248 Pac. 179.

Cited in *State v. Reagin*, 64 Mont. 481, 489, 210 Pac. 86.

When intoxication deemed involuntary so as to constitute a defense to criminal charge, note, 30 A. L. R. 761.

For text treatment of this subject see vol. 7 Cal. Jur. 866-870; vol. 8 Cal. Jur. 332; vol. 13 Cal. Jur. 620.

CHAPTER 2.

PERSONS LIABLE TO PUNISHMENT—PARTIES TO CRIME.

10731. Classification of parties to crime.

Cited in *State v. McClain et al.*, 76 Mont. 351, 357, 246 Pac. 956.

10732. Who are principals.

An instruction defining "principals" as all persons who "aid or abet" in the commission of an offense, instead of "aid and abet" as used in this section, is incorrect. *State v. McClain et al.*, 76 Mont. 351, 246 Pac. 956.

In a prosecution against husband and wife for the unlawful sale of intoxicating liquor, evidence showing that while the wife was present at their home where the sale was made by the husband, all she did was to refer the buyer to him upon request for the liquor, remaining otherwise passive, held insufficient to justify her conviction on the theory that by her presence and acquiescence in what was done by the husband she was guilty as a principal under this section. *State v.*

Cornish et al., 73 Mont. 205, 235 Pac. 702.

An instruction that all persons concerned in the commission of a crime, whether it be a felony or misdemeanor, and whether they directly commit the act constituting the offense or aid and abet in its commission, are principals, correctly state the law. *State v. Peters et al.*, 72 Mont. 12, 231 Pac. 392.

Cited in *State v. Cassill et al.*, 71 Mont. 274, 280, 229 Pac. 716; *State v. Maggert et al.*, 64 Mont. 331, 337, 209 Pac. 989.

For text treatment of this subject see vol. 7 Cal. Jur. 886; vol. 8 Cal. Jur. 173, 334; vol. 15 Cal. Jur. 894; vol. 22 Cal. Jur. 849.

CHAPTER 4.

SEDITION—CRIMINAL SYNDICALISM—DISPLAY OF RED FLAG.

10737. Sedition defined.

An information charging defendant with saying that the injuries to Belgian children exhibited in the United States were sustained in factories, and were not the result of German atrocities; that the murder of the Armenians was nothing; that the Armenians were heathens; that it was a mean trick for Germans to mutilate and mangle American prisoners of war, held not to charge sedition as defined in this section. *State v. McGlynn*, 60 Mont. 416, 199 Pac. 708.

Since ultimate facts constituting the crime charged, and not conclusions drawn

by the pleader from the facts, must be stated in an information, clauses following each of several alleged seditious utterances explaining and interpreting what defendant meant by the language used, held improper in an information charging sedition under this section. *State v. McGlynn*, 60 Mont. 416, 199 Pac. 708.

Language uttered by the defendant during the war, the effect of which was to suggest to the mind that the German government was superior to, and ought to be substituted for, the government of

the United States, held to have been seditious under the provisions of this section. *State v. Schaffer*, 59 Mont. 463, 197 Pac. 986.

Refusal of an instruction on the question of the defendant's intent was properly refused, the controlling feature of the sedition act being the effect of the language charged and not the intent of

the defendant when uttering it. *State v. Schaffer*, 59 Mont. 463, 197 Pac. 986.

This section before amendment was held not to be open to the constitutional objection that its subject matter is one upon which the congress alone may legislate. *State v. Fowler*, 59 Mont. 346, 196 Pac. 992.

CHAPTER 6.

OFFENSES BY AND AGAINST CANDIDATES FOR NOMINATION AND ELECTION—CONTESTS (CORRUPT PRACTICES ACT).

10773. Expenditure by or for candidate for office.

Sections 10773-10820 were cited in *Atkinson v. Roosevelt County et al.*, 71 Mont. 165, 184, 227 Pac. 811.

10775. Definition of terms.

Cited in *State ex rel. Wheeler v. Stewart*, 71 Mont. 358, 230 Pac. 366.

10805. Time for commencing contest.

Under this section, an election contest of a county office based on the ground that illegal votes had been cast and counted for the contestee in numbers sufficient to change the result must be com-

menced within forty days after the county clerk delivers the returns to the county board for the purpose of being canvassed. *Wilkinson v. LaCombe*, 59 Mont. 518, 197 Pac. 836.

10813. Contents of contest petition — Amendment — Bond — Costs — Citation—Precedence.

An election contest is not commenced unless the filing of the bond required by this section, is substantially contemporaneous with the filing of the petition; hence where the petition was filed on November 20th and the last day on which

the contest could be commenced was on December 15th, but the bond was not filed until December 22d, the proceedings were properly dismissed. *Wilkinson v. LaCombe*, 59 Mont. 518, 197 Pac. 836.

CHAPTER 7.

OFFENSES BY PUBLIC OFFICERS.

10823. Giving or offering bribes to executive officers.

Sections 10823, 10824 were cited in *State ex rel. Beazley v. District Court*, 75 Mont. 116, 119, 241 Pac. 1075.

10824. Asking or receiving bribes.

To charge an officer (a sheriff) with bribery under this section, the accusation must allege that defendant had asked, received or agreed to receive the bribe upon an understanding that his official action should be influenced thereby; hence a charge that the briber gave the officer money with intent to influence the latter's official action, while sufficient to charge bribery against the giver, was insufficient

to charge the offense against the accused, and therefore insufficient to charge him with wilful or corrupt malfeasance in office. *State ex rel. Beazley v. District Court*, 75 Mont. 116, 241 Pac. 1075.

Cited in *State v. Beazley*, 77 Mont. 430, 441, 250 Pac. 1114.

For text treatment of this subject see vol. 4 Cal. Jur. 489 et seq.

CHAPTER 10.

RESCUES AND ESCAPES.

10865. Retaking goods from custody of officer.

Where the evidence showed that defendant had planned to commit robbery by taking personal property from the custody of an officer who had seized it as stolen property, an instruction offered on the theory based on this section and 10894, that he had merely committed a misdemeanor in attempting to take and destroy evidence, and therefore could not

be held guilty of murder in the first degree in the absence of a showing of premeditation, deliberation and malice, was properly refused as not applicable to the evidence. *State v. Reagin*, 64 Mont. 481, 210 Pac. 86.

For text treatment of this subject see vol. 20 Cal. Jur. 349.

CHAPTER 12.

PERJURY AND SUBORNATION OF PERJURY.

10878. Perjury defined.

Cited in *State ex rel. Baracher v. District Court*, 75 Mont. 476, 479, 244 Pac. 280.

CHAPTER 13.

FALSIFYING EVIDENCE.

10894. Destroying evidence.

Cited in *State v. Bolton*, 65 Mont. 74, 80, 212 Pac. 504.

Applied with section 10865 in *State v. Reagin*, 64 Mont. 481, 210 Pac. 86.

CHAPTER 14.

CRIMINAL CONSPIRACY—UNFAIR DISCRIMINATION.

10904. Unfair discrimination in purchase price of commodities. Any person, firm, company, association, or corporation, either domestic or foreign, doing business in the state of Montana, and engaged in the business of buying, selling, producing, manufacturing, or distributing any commodity or product in general use, that shall, for the purpose of creating a monopoly or destroying the business of a regularly established dealer in such commodity or product, or to prevent the competition of any person, firm, company, association, or corporation who in good faith intends or attempts to become such dealer, shall discriminate between different persons, sections, communities, or portion thereof, or parts of the state of Montana, by purchasing any commodity or product in general use at a higher rate or price in one section, city, or community, or any portion thereof, than such person, firm, company, association, or corporation pays for such commodity or product in another section, city, or community, after making due allowance for the difference in the actual cost of transportation from the point of purchase to the point of manufacture, sale, storage, or distribution, and for the difference in the grade and quality of such commodity, or product, shall be deemed guilty of unfair discrimination, which is hereby prohibited and declared to be unlawful.

Proof that any person, firm, company, association, or corporation has paid a higher rate or price for any such commodity or product in one section, city, or community, or any portion thereof, than such person,

firm, company, association or corporation paid for such commodity or product in another section, city or community, or portion thereof, after making due allowance for the difference in the actual cost of transportation from the point of purchase to the point of manufacture, sale, storage, or distribution, and for the difference in the grade and quality of such commodity, or product, shall be prima facie evidence of the violation of this act; provided, however, that the payment of such higher rate or price in one section, city or community, or any portion thereof, than each person, firm, company, association or corporation pays for such commodity or product in another section, city or community, after making such allowance as above provided, shall not be deemed to be unfair discrimination provided such higher rate or price is paid for the purpose of meeting the rate or price set by a competitor in such section, city or community, but the burden of proof of such fact shall be upon the person, firm, company, association or corporation charged with unfair discrimination.

Amd. Sec. 1, Ch. 131, L. 1925.

CHAPTER 15.

OTHER MISCELLANEOUS OFFENSES AGAINST PUBLIC JUSTICE.

10930. Refusing to aid officers in arrest, etc.

Cited in *Westover v. Calder et al.*, 64 Mont. 264, 272, 209 Pac. 306.

10931. Compounding crimes.

Cited in *Portland Cattle Loan Co. v. Featherly*, 74 Mont. 531, 547, 241 Pac. 322.

10950. Omission of duty by public officer.

Cited in *Atkinson v. Roosevelt County* v. District Court, 61 Mont. 558, 570, et al., 66 Mont. 411, 419, 214 Pac. 74; 202 Pac. 756.
as section 8281, Revised Codes, in State

CHAPTER 16.

HOMICIDE.

10953. Murder defined.

Cited in *State v. Mumford*, 69 Mont. 424, 433, 222 Pac. 447. *State v. Bess*, 60 Mont. 558, 576, 199 Pac. 426.
Cited as section 8290, Revised Codes, in

10954. Malice defined—Express or implied.

Cited in *State v. Mumford*, 69 Mont. 424, 434, 222 Pac. 447; *State v. Reagin*, 64 Mont. 481, 489, 210 Pac. 86.

10955. Degrees of murder.

Under this section, making all murder committed in the perpetration of or attempt to perpetrate any of the crimes therein mentioned murder in the first degree, an information charging that the killing was wilful, deliberate, premeditated and with malice aforethought is sufficient to admit of proof that the kill-

ing was committed in the perpetration or attempt to perpetrate any one of such felonies. *State v. Bolton*, 65 Mont. 74, 212 Pac. 504.

Where defendant, after robbing a bank, escaped in an automobile with the money, pursuit being at once begun and continued uninterruptedly for about thirty

miles and shot one of the pursuers, an instruction that if the jury believed that defendant committed the crime of robbery and while escaping killed deceased, he was guilty of murder in the first degree, was proper under this section, the robbery at the time of the shooting having then still been in the process of commission. *State v. Jackson*, 71 Mont. 421, 230 Pac. 370.

Where a homicide is committed in the perpetration of or attempt to perpetrate any of the crimes mentioned in this section, it is murder in the first degree, and the court need not in its instructions define murder of the second degree or manslaughter. *State v. Bolton*, 65 Mont. 74, 212 Pac. 504.

Where homicide is committed in the perpetration of or attempt to perpetrate robbery the result is murder in the first degree, irrespective of the absence of intent in the accused to commit the latter crime, it being sufficient for conviction if he was capable of entertaining the felonious intent to commit robbery. *State v. Reagin*, 64 Mont. 481, 210 Pac. 86.

Cited in *State v. Mumford*, 69 Mont. 424, 435, 222 Pac. 447; *State v. Harris*, 66 Mont. 25, 31, 213 Pac. 211

For text treatment of this subject see vol. 13 Cal. Jur. 593 et seq.

10959. Manslaughter—Voluntary or involuntary.

Cited in *State v. Mumford*, 69 Mont. 424, 435, 222 Pac. 447.

10962. Proof of corpus delicti.

Under this section, the only fact required to be proved directly to establish the corpus delicti in a murder case is the death of the person alleged to have been killed, but the identity of such person, if in doubt, and the fact that defendant did the killing may be proved by direct, or by indirect or circumstantial evidence. *State v. Kindle et al.*, 71 Mont. 58, 227 Pac. 65.

In prosecutions for murder, proof of the corpus delicti involves the establishment of the fact that a murder has been committed, but it comprehends neither the identity of the person alleged to have been killed nor the killing by the person accused. *State v. Riggs*, 61 Mont. 25, 201 Pac. 272.

Cited in *State v. Vetter*, 76 Mont. 574, 575, 248 Pac. 179.

CHAPTER 19.

ROBBERY.

10973. Robbery defined.

Cited in *State v. Jackson*, 71 Mont. 421, 429, 230 Pac. 370; *State v. Reagin*, 64 Mont. 481, 488, 210 Pac. 86.

CHAPTER 20.

ASSAULTS.

10976. Assault in the first degree defined—Penalty.

In an information charging assault with a deadly weapon the words following the description of the weapon, "to wit, an instrument about a foot long with the knob on the striking end," are surplusage, the only effect of which was to confine the prosecution to proof of an

assault with the instrument described and not with some other. *State v. Maggert et al.*, 64 Mont. 331, 209 Pac. 989.

For text treatment of this subject see vol. 3 Cal. Jur. 202.

CHAPTER 22.

LIBEL.

10989. Libel defined.

Language used in a newspaper article charging a public officer with "graft" and

"dirty work," and that he had formed a collusive partnership with other per-

sons, examined and held libelous per se in *State v. Winterrowd*, 77 Mont. 74, 249 Pac. 664.

Abusive words as slander or libel, note, 37 A. L. R. 883.

Imputing disposition to avoid war service, note, 49 A. L. R. 260.

Statements respecting race, color or nationality as actionable, note, 50 A. L. R. 1413.

Imputation of objectionable political or sociological principles or practices, note, 51 A. L. R. 1071.

False imputation of marital intentions, note, 44 A. L. R. 1424.

Libel or slander affecting bank, note, 37 A. L. R. 1348.

For text treatment of this subject see vol. 16 Cal. Jur. 163 et seq.

10990. Punishment of libel.

Cited in *State v. Winterrowd*, 77 Mont. 74, 77, 249 Pac. 664.

10991. Malice presumed.

Cited in *Wray v. Great Falls Paper Co.*, 72 Mont. 461, 466, 234 Pac. 486.

10992. Truth may be given in evidence—Jury to determine law and fact.

Cited in *State v. Winterrowd*, 77 Mont. 74, 79, 249 Pac. 664.

CHAPTER 23.

RAPE—ABDUCTION—CARNAL ABUSE OF CHILDREN—ADULTERY AND SEDUCTION—PROSTITUTION OF WOMEN.

11000. Rape defined.

Cited in *State v. Hennessy*, 73 Mont. 20, 22, 234 Pac. 1094; *State v. Richardson*, 63 Mont. 322, 332, 207 Pac. 124.

11008. Importation and exportation of females for immoral purposes.

Where, under an information charging defendant with a violation of the White Slavery Act, in aiding an unmarried woman to obtain transportation from one county to a point in another county, the evidence of the state disclosed no more than that the accused on a certain day conveyed the woman from one point to another in the same county after which they were not again seen together until some five months thereafter, when they were found in another state living to-

gether in a state of adultery, it was insufficient to warrant conviction under the information. *State v. Berndt*, 60 Mont. 377, 199 Pac. 444.

This and the following sections of the White Slave Act held not unconstitutional as violative of section 23, article V, of the constitution, which provides that the title of an act shall not embrace more than one subject. *State v. Pippi*, 59 Mont. 116, 195 Pac. 556.

11015. Accepting money from earnings of prostitute a felony.

Since rules of evidence are subject to legislative control except for constitutional restrictions, the provision of this section, making the acceptance of money from a prostitute presumptive evidence of lack of consideration is valid, and in enacting it the legislature did not transgress its power. *State v. Pippi*, 59 Mont. 116, 195 Pac. 556.

Receipt of money without consideration

from a prostitute is sufficient to complete the crime denounced by this section, it being immaterial whether payment was made voluntarily or under compulsion. *State v. Pippi*, 59 Mont. 116, 195 Pac. 556.

For text treatment of this subject see vol. 20 Cal. Jur. 391.

CHAPTER 28.

SUNDRY OFFENSES AGAINST GOOD MORALS.

11039. Keeping open certain places on Sunday a misdemeanor.

This section, prohibiting the keeping open of dance-halls, dance-houses, etc., on Sunday, is not invalid as making an arbitrary classification between dance-halls and theaters, by exempting the latter places of amusement from the operation of the act, although prior thereto they had been included in one class subject to police regulation. *State v. Loomis*, 75 Mont. 88, 242 Pac. 344.

The state has the right to prescribe the territorial limits within which dance-houses or dance-halls may be conducted on Sunday; therefore this section, providing that a dance-hall or pavilion in a public park or playground may operate on Sunday under certain conditions, while one located outside thereof must remain closed on that day does not arbitrarily discriminate between subjects of the same class, but does create two distinct classes based upon location, and hence is not ob-

jectionable as denying the equal protection of the law. *State v. Loomis*, 75 Mont. 88, 242 Pac. 344.

A dance-house or dance-hall is a place maintained for promiscuous and public dancing, the rules for admission to which are not based upon personal invitation or selection. *State v. Loomis*, 75 Mont. 88, 242 Pac. 344.

This section, prohibiting the operation of dance-halls, dance-houses, etc., on Sunday, "or any other place of amusement where any intoxicating liquors are sold," construed, on application for writ of habeas corpus, and held, in view of the history of the legislation on Sunday observance and the rule of the construction *infra*, to interdict the operation of a dance-hall on Sunday, even though intoxicating liquors are not sold therein. *In re Klune*, 74 Mont. 332, 240 Pac. 286.

11039.1. Certain minors not to attend public dance-halls. Every owner, proprietor, manager or employee of a public dance-hall or a place where public dances are held, who encourages or permits a minor under the age of sixteen years to be, remain in, or frequent such hall or place while a public dance is in progress, without being accompanied by his or her parent or legal guardian, shall be guilty of a misdemeanor.

En. Sec. 1, Ch. 49, L. 1927.

CHAPTER 29.

INTOXICATING LIQUORS—SALE TO MINORS—REPEAL OF LAWS.

11048. Definition of terms.

Moonshine whisky is "whisky," within the meaning of this section, illicitly distilled or produced. *State v. Sedlacek*, 74 Mont. 201, 239 Pac. 1002.

Under this section, in a prosecution for unlawfully possessing and transporting intoxicating liquor, the state is not required to prove that the liquor (beer) was fit for beverage purposes. *State v. Miller*, 69 Mont. 1, 220 Pac. 97.

In an information charging the selling "of certain intoxicating liquors known as whisky" the word "whisky" was surplusage and the failure of the state to prove that the liquor sold was whisky was not a fatal variance. *State v. Jenkins*, 66 Mont. 359, 213 Pac. 590.

In an information drawn under the above section the omission to use the word "unlawfully" modifying the verb "possess" does not render the information

defective. *State v. Jenkins*, 66 Mont. 359, 213 Pac. 590.

Sections 11048-11087 held not invalid as in contravention of section 11, article VII of the state constitution, under the rule that a subject submitted to the legislative assembly while in extraordinary session, is before it for consideration to the same extent as if, specifically mentioned in the governor's proclamation calling it. *State v. Dishman*, 64 Mont. 530, 210 Pac. 604; *State v. Brush*, 65 Mont. 90, 210 Pac. 605.

The fundamental purpose of the legislative assembly in enacting the Prohibition Enforcement Act, was to harmonize the state act with the provisions of the federal statute. *State v. Marchindo*, 65 Mont. 431, 211 Pac. 1093.

Sections 11048-11086, amendatory of sections 11100-11122, must be construed

as supplemental to and read with the latter act as constituting one general legislative plan for the enforcement of the Prohibition Act. State ex rel. Neville v. Mullen, 63 Mont. 50, 207 Pac. 634.

Sections 11048-11086 were cited in State v. Duncan, 74 Mont. 428, 434, 240 Pac. 978.

Sections 11048-11133 were cited in State ex rel. Lamey v. Young, 72 Mont. 408, 416, 234 Pac. 248.

Test of intoxicating character of liquor, notes, 4 A. L. R. 1137; 11 A. L. R. 1233; 36 A. L. R. 725.

11048.1. Penalty for sale of liquor to minors. Any person who shall sell, give away or dispose of intoxicating liquors to a minor, shall be guilty of a misdemeanor, and for the first offense, be punishable by a fine of not less than two hundred and fifty dollars, nor more than five hundred dollars and by imprisonment for not less than six months nor more than one year in the county jail, and for the second and subsequent offenses, he shall be guilty of a felony and punishable by a fine of not less than five hundred dollars, nor more than two thousand dollars, and by imprisonment in the state penitentiary for not less than one year, nor more than two years. Nothing herein contained shall prohibit the furnishing of intoxicating liquor to minors upon any physician's prescription where authorized by the laws of the United States nor the furnishing of wine for sacramental purposes.

En. Sec. 1, Ch. 122, L. 1927.

11048.2. Definition of terms. When used in this act, or in any other laws of the state relating to intoxicating liquors, the word "liquor" or the phrase "intoxicating liquor" shall be construed to include alcohol, brandy, whiskey, rum, gin, beer, ale, porter and wine and in addition thereto any spirituous, vinous, malt, or fermented liquor, liquids, and compounds, whether medicated, proprietary, patented or not, and by whatever name called containing one-half of one per centum, or more of alcohol by volume which are fit for use for beverage purposes; provided, that the foregoing definition shall not extend to de-alcoholized wine, nor to any beverage or liquid produced by the process by which beer, ale, porter, or wine is produced, if it contains less than one-half of one per centum of alcohol by volume.

En. Sec. 2, Ch. 122, L. 1927.

11048.3. Repeal of state prohibition laws. That sections 11048, 11049, 11050, 11051, 11052, 11053, 11054, 11055, 11056, 11057, 11058, 11059, 11060, 11061, 11062, 11063, 11064, 11065, 11066, 11067, 11068, 11069, 11070, 11072, 11074, 11076, 11077, 11078, 11080, 11081, 11082, 11083, 11085, 11086, 11087, 11088, 11089, 11090, 11091, 11092, 11093, 11094, 11095, 11096, 11097, 11098, 11099, 11100, 11101, 11102, 11103, 11104, 11105, 11106, 11108, 11109, 11110, 11111, 11112, 11113, 11114, 11115, 11116, 11117, 11118, 11119, 11120, 11121, 11122; also sections 11071, 11075, 11079, 11084 and 11084A as amended by chapter 116, of the Laws of the Eighteenth Legislative Assembly of 1923; and also sections 11073 and 11107 as amended by chapter 78 of the Laws of the Nineteenth Legislative Assembly of 1925, being all of chapter 29 of the Revised Codes of 1921 as above amended, relating

to intoxicating liquors and regulations governing manufacture, sale and use thereof, be and the same are hereby repealed.

NOTE.—This measure became a law by virtue of the governor's proclamation on November 20, 1926, having been enacted by the people as Initiative Measure No. 30.

11049. Liquor traffic prohibited—Exceptions.

"Transportation" of liquor defined in State v. Redmond, 73 Mont. 376, 237 Pac. 486.

Cited in State v. Gardner, 77 Mont. 8, 14, 249 Pac. 574; State v. Duncan, 74

Mont. 428, 435, 240 Pac. 978; State v. Charette, 75 Mont. 78, 80, 242 Pac. 343; State v. Archambault, 72 Mont. 259, 263, 232 Pac. 1107; State v. Griebel, 65 Mont. 390, 396, 211 Pac. 321.

11052. Sales without permit, when prohibited—Exceptions.

Under a charge of unlawfully possessing whisky claimed by defendant to have been procured by her for her husband by advice of a physician, defendant could justify such possession only by a showing that it was obtained under a permit or by a physician's prescription. State v. Charette, 75 Mont. 78, 242 Pac. 343.

Sections 11052, 11053 were cited in State v. Gardner, 77 Mont. 8, 14, 249 Pac. 574.

Sections 11052, 11055, 11058, 11059 and 11060 were cited in State v. Redmond, 73 Mont. 376, 381, 237 Pac. 486.

11060. Unlawful to accept packages with false statements.

Sections 11060-11063 were cited in State v. Gardner, 77 Mont. 8, 14, 249 Pac. 574.

11064. Certain solicitation forbidden.

Cited in State v. Gardner, 77 Mont. 8, 14, 249 Pac. 574.

11066. Common nuisance defined—Misdemeanor—Lien on premises.

The legislature may, within the constitutional limits of its power, declare any act criminal and make the repetition or continuance thereof a public nuisance, so as to enable the courts on conviction to pronounce judgment of abatement or to vest in courts of equity the power to abate them by injunction, and in enacting sections 11066-11069, Revised Codes of 1921, declaring certain acts and places with reference to violations of the Prohibition Act common nuisances which may be restrained by injunction, and providing punishment by means of contempt proceedings, it did not transcend its power. State ex rel. Stewart v. District Court, 77 Mont. 361, 49 A. L. R. 627, 251 Pac. 137.

In a prosecution for maintaining a liquor nuisance under this section, evidence of the general reputation of the place where the nuisance was alleged to have existed as one where intoxicating liquor was kept and sold was inadmissible, in the absence of a statute making it admissible. State v. Peters et al., 72 Mont. 12, 231 Pac. 392.

An employee who has charge of the place of business of his employer and sells intoxicating liquor therein during the latter's absence is guilty of maintaining a nuisance within the meaning of

this section 11066. State v. Peters et al., 72 Mont. 12, 231 Pac. 392.

Instruction defining the word "maintain" employed in this section, making the maintaining of a liquor nuisance a misdemeanor, held inadequate. State v. Peters et al., 72 Mont. 12, 231 Pac. 392.

This section and section 11607 are not in conflict with sections 11124, 11125 but supplement said sections and therefore do not supersede them. State ex rel. Bourquin v. Morris et al., 67 Mont. 40, 214 Pac. 332.

One sale of intoxicating liquor, without repetition, with no other evidence of law violation or facts strongly indicating either habitual sales, continued violation or such recurrence of unlawful acts as to colorably indicate the unlawful character of the use of the place, is insufficient to establish its character as a common nuisance within the meaning of the Prohibition Act. State v. Jenkins, 66 Mont. 359, 213 Pac. 590.

In a prosecution for maintaining a common nuisance under this section, made supplemental to and a part of the laws relating to intoxicating liquors, the district court had original jurisdiction, under section 11122, conferring upon the district court original jurisdiction for violations of liquor laws and continued

in force by the act of 1921, notwithstanding the offense is made a misdemeanor by this section, punishable by a fine not exceeding \$500 and imprisonment in the county jail for not exceeding six months, and therefore otherwise triable in a justice court under section 11630, Revised

Codes of 1921. *State v. Bowker*, 63 Mont. 1, 205 Pac. 961.

Cited in *State v. Mercier et al.*, 70 Mont. 333, 334, 225 Pac. 802.

Cited in *State v. Lewis*, 67 Mont. 447, 449, 216 Pac. 337.

11067. Action to enjoin nuisance—Injunction—Order of court—Bond.

For case involving the abatement of a building as a gambling and liquor nuisance and discussion of the sufficiency of the judgment of abatement, see *State ex rel. Lamey v. Young*, 72 Mont. 408, 234 Pac. 248.

A judgment in an abatement proceeding that the place in question be closed and kept closed "until released in the manner provided by law," construed to mean that the premises should not be occupied or used for one year unless the court should sooner permit them to be occupied or used, and not open to the objection that it did not conform to the provisions of this section. *State v. Mercier et al.*, 70 Mont. 333, 225 Pac. 802.

This section is not invalid in so far as it authorizes the trial court upon finding

that a particular place is a common nuisance within the meaning of section 11066, in addition to ordering it closed, to direct that it shall not be occupied or used for one year thereafter. *State v. Mercier et al.*, 70 Mont. 333, 225 Pac. 802.

In a proceeding under this section, to abate as a common nuisance a rooming-house where intoxicating liquor was being illegally kept and sold, providing that the "action shall be brought and tried as an action in equity," the defendant is not entitled to a jury trial. *State v. Mercier et al.*, 70 Mont. 333, 225 Pac. 802.

Applied with section 11066 in *State ex rel. Bourquin v. Morris et al.*, 67 Mont. 40, 42, 214 Pac. 332.

11070. Unlawful possession of liquor—Property right.

This section, a part of the state Prohibition Law, declaring unlawful the possession of liquor or property designed for the manufacture of liquor intended for use in violation of the act, and that no property right shall exist in such liquor or property, does not merely apply to proceedings in rem against contraband articles, but, taken in connection with section 11073 fixing the penalty, defines a public offense. *State v. Gardner*, 77 Mont. 8, 249 Pac. 574.

The crime defined by this section is a statutory one enacted under the police power of the state which the legislature may enact without regard to a criminal intent in the wrongdoer; hence an information drafted under it is not rendered defective in the absence of an allegation that defendant committed the act complained of with a specific intent to violate the provisions of the act. *State v. Gardner*, 77 Mont. 8, 249 Pac. 574.

That articles charged to have been unlawfully possessed under this section were "property designed for the manufac-

ture of liquor intended for use" may be shown by either direct or circumstantial evidence, and testimony by an officer that he found among other things, 500 gallons of "mash" in a high state of fermentation nearly ready to be made into whisky, was sufficient to show a violation of the provisions of the section. *State v. Gardner*, 77 Mont. 8, 249 Pac. 574.

The presumption being that eighty-eight gallons of uncolored moonshine whisky, stills, etc., seized under a void search-warrant, were contraband in which, under this section, no property rights exist, the supreme court, on application for writ of prohibition to prevent their use as evidence against relator from whose premises they were taken under a void search-warrant, will not decree their return to him, but will leave him to his remedy at law, if any he have. *State ex rel. King v. District Court*, 70 Mont. 191, 224 Pac. 862.

Cited in *State v. Hoppins*, 68 Mont. 504, 511, 219 Pac. 1106; *State v. Griebel*, 65 Mont. 390, 396, 211 Pac. 321.

11071. Complaint—Search-warrant, form and issuance.

A justice of the peace court being one of limited jurisdiction, the fact that the approval of the county attorney to the issuance of a search-warrant must affirmatively appear from the record on appli-

cation for writ to prohibit the use of evidence obtained by the search, but in the absence of any statutory requirement in chapter 116, L. 1923, amendatory of this section, of how the approval shall

be evidenced, a recital that his approval was obtained is prima facie sufficient to establish the fact. *State ex rel. Baracker v. District Court*, 75 Mont. 476, 244 Pac. 280.

Recital in an affidavit for a search-warrant that "I personally saw a keg of intoxicating beverages in said barn" was held sufficient, if believed by the magistrate, to show probable cause for the issuance of the warrant, in *State ex rel. Baracker v. District Court*, 75 Mont. 476, 244 Pac. 280.

Chapter 116, L. 1923, amending this section and sections 11075 and 11079, increasing the punishment for the unlawful transportation or possession of intoxicating liquor is not open to the attack that it contravenes the provisions of section 23, article V, of the constitution, in that the purpose to increase the punishment is not indicated in its title. *State v. Duncan*, 74 Mont. 428, 240 Pac. 978.

In view of the fact that this section, as amended (as well as section 11104), authorizing the issuance of search-warrants in liquor cases, speaks, in the present tense, violation of the law on a given day does not constitute probable cause for believing that like illegal acts were being committed twenty-five days afterward, in the absence of anything to indicate that the character of the then operations had not changed in the meantime. *State v. Gardner*, 74 Mont. 377, 240 Pac. 984.

A search-warrant issued without the approval of the county attorney is void. *State v. Ladue*, 73 Mont. 535, 237 Pac. 495.

Information imparted to an officer that an automobile containing liquor would appear at a certain place after dark, and proof that the person driving it had the reputation of being a bootlegger who had been a constant source of trouble to the sheriff's office and had before been caught in the act of transporting liquor, are insufficient bases for either the issuance of a search-warrant or an arrest without a warrant. *State ex rel. Hansen v. District Court*, 72 Mont. 245, 233 Pac. 126.

An affidavit based upon hearsay statements such as that affiant was informed by various persons that they had purchased liquor at a certain place, that liquor was manufactured and kept for sale there, and that "it is a notorious fact" in and around the locality that liquor could be procured on the premises, was insufficient to justify the issuance of a search-warrant. *State ex rel. Merrill v. District Court*, 72 Mont. 77, 231 Pac. 1107.

Under the rule that where the legislature confers jurisdiction upon a justice's court where none existed before, it must be exercised in the manner and

within the limits stated, a search-warrant issued by a justice of the peace under this section, without the approval of the county attorney was void. *State ex rel. Skrukud v. District Court*, 71 Mont. 570, 230 Pac. 1089.

Where a search-warrant contained a sufficient description of the premises to be searched its validity was not affected by the improper use of the word "partially" by the legislature in enacting this section, under which it was issued. *State ex rel. Skrukud v. District Court*, 71 Mont. 570, 230 Pac. 1089.

This section, conferring jurisdiction upon justices' courts to issue search-warrants in liquor cases is not rendered invalid as in contravention of section 7, article III, of the constitution by the erroneous use of the word "partially" instead of "particularly" in providing that the complainant in his affidavit shall "partially" describe the premises to be searched. *State ex rel. Skrukud v. District Court*, 71 Mont. 570, 230 Pac. 1089.

If there be any conflict between the general provisions of the codes relating to search-warrants which provide that before a search-warrant may issue the deposition of the complainant must be taken, and this section, dealing with search-warrants in liquor cases and providing that a warrant may issue upon complaint verified by affidavit, the latter, being special in character, is controlling in a prosecution for a violation of the liquor law. *State v. English*, 71 Mont. 343, 229 Pac. 727.

The provision of this section as amended by chapter 116, L. 1923, authorizing a justice of the peace to issue a search-warrant upon the filing of a verified complaint to the effect that the complainant believes that intoxicating liquor is being disposed of contrary to law, relates to a present existing condition and not to one which existed months before. *State ex rel. Stange v. District Court*, 71 Mont. 125, 227 Pac. 576.

For discussion of sufficiency of allegations to the effect that complainant "believed" that intoxicating liquors were being sold, etc., in a complaint for a search-warrant, see *State ex rel. Stange v. District Court*, 71 Mont. 125, 227 Pac. 576.

While under this section, as amended by chapter 116, L. 1923, a justice of the peace may, with the approval of the county attorney, issue search-warrants in cases involving violations of the liquor laws, the district court alone has jurisdiction to determine a forfeiture of the property seized. *State v. Certain Intoxicating Liquors*, 71 Mont. 79, 227 Pac. 472.

This section as amended in 1923, by which justices of the peace are given the

same authority to issue search-warrants in liquor cases as is reposed in district judges, but by which no provision is made for certification of the proceedings by the justice of the peace to the district court, must be construed, by recourse to the general statutes relating to search-warrants, to require the justice of the peace to certify all proceedings in connection with the search-warrant issued by him to the district court forthwith after the return made to him by the officer serving the warrant. *State v. Certain Intoxicating Liquors*, 71 Mont. 79, 227 Pac. 472.

Where a justice of the peace who had issued a search-warrant in a liquor case did not certify the proceedings to the district court until two weeks had expired after return of the warrant made to him, the statute was not substantially complied with and the judgment of the district court ordering the property seized under the warrant was void, entitling the owner to a return of the property (other than the liquor seized). *State v. Certain Intoxicating Liquors*, 71 Mont. 79, 227 Pac. 472.

The variance between a search-warrant authorizing search of premises described as "609 A Street" and the return of the searching officer that he had searched "906 A Street" was fatal and not cured by the addition of the words in the return "as described in said warrant." *State ex rel. Thibodeau v. District Court*, 70 Mont. 202, 224 Pac. 866.

Expressions of opinion or belief founded upon suspicions based upon conjecture are insufficient to enable a magistrate issuing a warrant to say that prob-

able cause for the issuance of the warrant exists. *State ex rel. Thibodeau v. District Court*, 70 Mont. 202, 224 Pac. 866.

The description contained in a warrant authorizing the search of a dwelling-house upon a certain quarter-section of land "and all outbuildings" was too indefinite, where the owner claimed that there were three dwelling-houses upon the land and the state contended that there was but one dwelling and that the other structures were bunkhouses and the like, and a seizure of liquor made in pursuance thereof was illegal. *State ex rel. King v. District Court*, 70 Mont. 191, 224 Pac. 862.

Where it is sought to search and seize property there must not be any obscurity or uncertainty; the warrant must be complete in itself and the description of the premises contained in the complaint cannot be made to aid that set forth in the warrant. *State ex rel. King v. District Court*, 70 Mont. 191, 224 Pac. 862.

Conceding (without deciding), that under this section as amended, a district judge may not issue a search-warrant without the approval of the county attorney first obtained, in the absence of a showing that such approval had not been given, it will be presumed that official duty was regularly performed and approval had in the manner required by law. *State v. Tesla et al.*, 69 Mont. 503, 223 Pac. 107.

Sections 11071-11073 were cited in *State v. Redmond*, 73 Mont. 376, 381, 237 Pac. 486; as section 24, act of 1921, in *State v. Bowker*, 63 Mont. 1, 8, 205 Pac. 961.

11072. Form and execution of search-warrant.

Cited in *State v. Rice*, 73 Mont. 272, 275, 235 Pac. 716.

11073. Regulation of seizure, of vehicles and destruction of liquor.

When an officer discovers a person in the act of illegally transporting intoxicating liquor he must, under this section, arrest the person in charge thereof, seize the liquor and take possession of the vehicle used as the means of transportation. *State ex rel. Brown v. District Court*, 72 Mont. 213, 232 Pac. 201.

This section, authorizing an officer to seize intoxicating liquor discovered by him while being conveyed, in a wagon,

automobile, etc., or "other vehicle," has no application to a case where the liquor seized was being carried in a handbag, the words "other vehicle" being limited in their meaning to the same general character of vehicles as those particularly enumerated in the section. *State ex rel. Neville v. Mullen*, 63 Mont. 50, 207 Pac. 634.

Cited in *State v. Duncan*, 74 Mont. 428, 431, 240 Pac. 978.

11075. Penalty for violation of act and false report.

The provision of this section, as amended by chapter 116, L. 1923, requiring the district court upon conviction of a person for an offense against the Prohibition Act to enjoin such person perpetually from thereafter violating any of

its provisions, is void in so far as it authorizes the issuance of injunction against the commission of offenses not denominated nuisances in the act, as permitting substitution of a summary trial of the offender by the court in a contempt pro-

ceeding, for the trial by jury guaranteed by the constitution. *State ex rel. Stewart v. District Court*, 77 Mont. 361, 49 A. L. R. 627, 251 Pac. 137.

Section 11121, so far as it prescribes the punishment for the unlawful possession and transportation of intoxicating liquor, for which offense a special penalty is not provided, was impliedly re-

pealed by this section which is in conflict with section 11121 and therefore is controlling. *State v. Miller*, 69 Mont. 1, 220 Pac. 97.

Cited in *State v. Gardner*, 77 Mont. 8, 14, 249 Pac. 574; *State v. Duncan*, 74 Mont. 428, 240 Pac. 978; *State v. Redmond*, 73 Mont. 376, 381, 237 Pac. 486.

11076. Self-incrimination no excuse—Exemption.

The immunity against prosecution for a violation of the liquor laws granted by this section, to one who in obedience to a subpoena has testified in a prosecution against another which arose out of the same transaction on which the charge

against him was based, extends only to a witness who testified in behalf of the prosecution, not one who testified for the defense. *State v. Archambault*, 72 Mont. 259, 232 Pac. 1107.

11078. Joinder of offenses—Rules of pleading.

Where defendant in a prosecution for a violation of the liquor law deems the information insufficient as to certain details he may, under this section, apply for a bill of particulars; his failure to do so, the pleading being otherwise sufficient, bars him from raising the question on appeal. *State v. Dow*, 71 Mont. 291, 229 Pac. 402.

Section 11581 provides that an act made punishable in different provisions of the code cannot be punished under more than one. Section 11078 declares that separate offenses against the Intoxicating Liquor Law may be united in the information in separate counts and defendant tried at one trial and a penalty for all offenses imposed. Held, that the procedure pointed out by the latter section is controlling, and that the contention that it is violative of the constitu-

tional provision that no person shall be twice put in jeopardy for the same offense is without merit. *State v. Marchindo*, 65 Mont. 431, 211 Pac. 1093.

An information charging unlawful possession of intoxicating liquor need not specify the nature of the liquor, in view of the provision of this section authorizing the court to direct that defendant be furnished a bill of particulars when deemed proper. *State v. Griebel*, 65 Mont. 390, 211 Pac. 321.

Cited in *State v. Gardner*, 77 Mont. 8, 15, 249 Pac. 574; *In re Pyle*, 72 Mont. 494, 497, 234 Pac. 254; *State v. Dow*, 71 Mont. 291, 299, 229 Pac. 402; *State v. Hem*, 69 Mont. 57, 63, 220 Pac. 80; *State v. Jenkins*, 66 Mont. 359, 364, 213 Pac. 590; *State v. Fredericks*, 65 Mont. 25, 27, 212 Pac. 495.

11079. Possession prima facie evidence—Burden of proof—Compromise of actions.

Possession of moonshine whisky is unlawful and such possession is prima facie evidence that the whisky was kept for unlawful purposes. *State v. Kepler et al.*, 77 Mont. 307, 250 Pac. 603.

The possession of intoxicating liquor is made prima facie evidence by this section, that it is kept in violation of law, and the burden of proving lawful possession is upon the possessor. *State ex rel. Muzzy v. Uotila et al.*, 71 Mont. 351, 229 Pac. 724.

Under this section, as amended, possession of intoxicating liquor is prima facie evidence that the possession is unlawful and that it is being kept for the purpose of being sold or otherwise disposed of in violation of the law, and the burden is upon defendant to prove that his possession of it was lawful. *State v. Sawyer*, 71 Mont. 269, 229 Pac. 734.

An instruction offered by defendant in a prosecution for the illegal possession of intoxicating liquor that the burden was upon the state to prove beyond a reasonable doubt that the liquor was possessed by the defendant with intent to dispose of the same unlawfully was properly refused, this section providing otherwise. *State v. Rice*, 73 Mont. 272, 235 Pac. 716.

Under this section, as amended by section 3, chapter 116, L. 1923, the possession of intoxicating liquor is presumptively illegal, and the burden of justifying its acquisition, possession and use is upon the possessor. *State v. Breeding*, 73 Mont. 30, 234 Pac. 1097.

In a prosecution under the Prohibition Act for maintaining a common nuisance, an instruction in the language of this section shifting the burden of proof to

defendant to show that liquors found in his possession were lawfully acquired, possessed and used, was correctly given. *State v. Lewis*, 67 Mont. 447, 216 Pac. 337.

The legislature may prescribe that which shall be prima facie evidence of guilt and shift to the defendant the necessity of satisfactory explanation, in the absence of express constitutional inhibition; hence, there being no such inhibition in the constitution, it had the power to provide in this section that "in any action"—thus including both

criminal as well as civil actions—for a violation of the Prohibition Act the burden shall be upon the defendant to prove that liquor in his possession was lawfully acquired, possessed and used. *State v. Lewis*, 67 Mont. 447, 216 Pac. 337.

Cited in *State v. Charette*, 75 Mont. 78, 80, 242 Pac. 343; *State v. Duncan*, 74 Mont. 428, 240 Pac. 978; *State ex rel. King v. District Court*, 70 Mont. 191, 200, 224 Pac. 862; *State v. Griebel*, 65 Mont. 390, 398, 211 Pac. 321.

11085. Appointment, oath and removal of special officers.

A special enforcement officer is qualified to act as such immediately upon taking and subscribing the oath required by this section, the filing of the oath within thirty days after notice of his appointment not being a condition precedent to entering upon the discharge of his duties. *State ex rel. Muzzy v. Uotila et al.*, 71 Mont. 351, 229 Pac. 724.

The secretary of the state board of examiners which is empowered by this section, to appoint special enforcement officers, is the secretary of state and not the clerk of that board, and therefore a copy of the minutes of the board certified by the clerk instead of its secre-

tary—the legal custodian of its records—in an attempt to show the appointment of a special enforcement officer was properly excluded from the evidence. *State v. Rouleau et al.*, 68 Mont. 529, 219 Pac. 1096.

This section makes no provision for the appointment of a deputy special enforcement officer, and therefore the action of the state board of examiners in attempting to ratify such an appointment as a special enforcement officer after he had made a seizure as deputy was a nullity. *State v. Rouleau et al.*, 68 Mont. 529, 219 Pac. 1096.

11086. Scope of act.

Cited as section 39, chapter 9, Ex. L. 1921, in *State ex rel. Hansen v. District Court*, 72 Mont. 245, 250, 233 Pac. 126; *State v. Knilians*, 69 Mont. 8, 13, 220 Pac. 91; *State v. Miller*, 69 Mont. 1, 5,

220 Pac. 97; *State v. Jenkins*, 66 Mont. 359, 366, 213 Pac. 590; *State ex rel. Neville v. Mullen*, 63 Mont. 50, 54, 207 Pac. 634; *State v. Bowker*, 63 Mont. 1, 4, 205 Pac. 961.

11100. Act an exercise of police powers.

The Prohibition Enforcement Act, in so far as it relates to the issuance of search-warrants, is in pari materia with the sections of the Revised Codes upon the subject, and must be construed accordingly. *State ex rel. Samlin v. District Court*, 59 Mont. 600, 198 Pac. 362.

Cited in *State v. Gardner*, 77 Mont. 8, 15, 249 Pac. 574.

This and following sections of the act were cited as chapter 143, L. 1917, in *State ex rel. Green v. Wright*, 61 Mont. 115, 201 Pac. 316; *State ex rel. Goodwin v. Dishmon et al.*, 61 Mont. 117, 201 Pac. 286.

11102. Prohibition against dealing in intoxicating liquors in person or as agent.

Cited in *State v. Gardner*, 77 Mont. 8, 14, 249 Pac. 574.

11104. Issuance and execution of search-warrant—Seizure of intoxicating liquors.

A search-warrant issued under this section is not required to contain the name of any person or that it be directed against any person, it being suffi-

cient if it describe the premises to be searched; therefore where the name "John Doe" was inserted, it was surplusage and hence the fact that defendant

did not answer that description did not vitiate the warrant. *State v. Rice*, 73 Mont. 272, 235 Pac. 716.

To meet the requirements of the constitutional guaranty against unreasonable searches and seizures and of the sections of the Revised Codes upon the same subject, the affidavit or complaint upon which a search-warrant is asked under the Prohibition Enforcement Act must be based upon something more tangible than mere hearsay or rumor. *State ex rel. Samlin v. District Court*, 59 Mont. 600, 198 Pac. 362.

A complaint filed in the district court under the Prohibition Enforcement Act stating, in the form of a conclusion, that affiant "has probable cause to believe and does believe" that on a given day intoxicating liquors were being unlawfully possessed, kept, etc., on certain premises, was insufficient to give the district court or judge jurisdiction to issue a search-warrant; the warrant issued in pursuance thereof was violative of the inhibition contained in section 7, article III, of the state constitution, against unreasonable searches and seizures, and the proceeding based thereon was void ab initio. *State ex rel. Samlin v. District Court*, 59 Mont. 600, 198 Pac. 362.

On application to a district judge for

a search-warrant under this section, the facts upon which it is made must be stated under oath, whereupon it becomes his duty to determine their sufficiency to show probable cause for its issuance, without reference to the opinion or belief of the applicant in that regard. *State ex rel. Samlin v. District Court*, 59 Mont. 600, 198 Pac. 362.

Cited in *State v. Gardner*, 74 Mont. 377, 381, 240 Pac. 984; *State v. Certain Intoxicating Liquors*, 71 Mont. 79, 85, 227 Pac. 472; *State ex rel. Skrukud v. District Court*, 71 Mont. 570, 574, 230 Pac. 1089; *State v. Johnson et al.*, 69 Mont. 38, 43, 220 Pac. 82; as sections 7 and 8, chapter 143, L. 1917, in *State ex rel. Neville v. Mullen*, 63 Mont. 50, 54, 207 Pac. 634; *State v. Bowker*, 63 Mont. 1, 7, 205 Pac. 961; as section 7, Enforcement Act, in *State ex rel. Green v. Bird et al.*, 62 Mont. 408, 415, 205 Pac. 241.

Constitutional guaranties as applied to search for or seizure of intoxicating liquors, note, 39 A. L. R. 811.

Sufficiency of showing of probable cause for search for intoxicating liquors, notes, 3 A. L. R. 1517; 13 A. L. R. 1318; 24 A. L. R. 742; 39 A. L. R. 835; 41 A. L. R. 1539.

11105. Hearing of return—Disposal of intoxicating liquor and other articles seized.

In the absence of the verified claim to articles seized under an alleged void search-warrant required by this section the claimant has no right to be heard at the hearing at which ownership is to be determined. *State v. Rice*, 73 Mont. 272, 235 Pac. 716.

An automobile had been sold by a dealer in a neighboring state under a conditional sales title reservation contract, providing that it should not be taken out of the state until fully paid for. Thereafter and without the knowledge of the seller, it was brought to Montana and used in the unlawful transportation of intoxicating liquor. Held that its forfeiture and sale under this section was unwarranted. *State ex rel. Green v. Bird et al.*, 62 Mont. 408, 205 Pac. 241.

The provision of this section, authorizing forfeiture of personal property possessed with the intention of violating the prohibition law, was not intended to include the rights of innocent owners or encumbrancers. *State ex rel. Green v. Bird et al.*, 62 Mont. 408, 205 Pac. 241.

Cited in *State v. English*, 71 Mont. 343, 345, 229 Pac. 727; *State v. Certain Intoxicating Liquors*, 71 Mont. 79, 82, 227 Pac. 472; *State v. Johnson et al.*, 69 Mont. 38, 43, 220 Pac. 82; as section 8, Prohibition Enforcement Act, in *State ex rel. Samlin v. District Court*, 59 Mont. 600, 612, 198 Pac. 362.

11106. Duty of peace officers to arrest offenders and seize liquor.

Where officers detected a pronounced odor of fermented whisky mash and moonshine whisky fumes emanating from defendant's residence and on being admitted found a still in operation as well as a quantity of mash and moonshine whisky, they were justified under this section, to arrest defendant and seize the articles found without a warrant, as for an offense committed within their presence, and the court properly refused

to suppress the evidence thus secured from being used at defendant's trial for a violation of the liquor laws. *State v. DeHaven*, 77 Mont. 299, 250 Pac. 615.

While under this section, it is the duty of an officer in whose presence the liquor law is being violated to arrest the offender, of his failure to do so the owner of contraband articles which were seized could not complain on motion to suppress evidence thus obtained. *State ex rel.*

Merrill v. District Court, 72 Mont. 77, 231 Pac. 1107.

That portion of this section prescribing the procedure to be observed by an officer making return upon a search-warrant is designed solely for the purpose of laying a foundation for a civil proceeding in rem for the forfeiture of the seized property, and therefore failure to make return does not affect the criminal prosecution or the admissibility of the evidence procured by the seizure. State ex rel. Merrill v. District Court, 72 Mont. 77, 231 Pac. 1107.

An officer who is appraised by any of his senses that the liquor law is being violated in his presence may, under this section, arrest the offender or make a seizure without process; hence an officer who on approaching an apparently unoccupied building detected a pronounced odor of fermenting whisky mash emanating therefrom was authorized to enter and seize contraband articles found therein, even though the search-warrant under which he was acting was void, the offense having been committed in his presence. State ex rel. Merrill v. District Court, 72 Mont. 77, 231 Pac. 1107.

Proceedings relative to seizure and forfeiture of liquors, fixtures, etc., authorized by this section where a violation of the prohibition law occurs in the presence of an officer, are of a civil nature, jurisdiction over which is lodged in the district court upon the filing of a properly verified complaint therein. State v. Johnson et al., 69 Mont. 38, 220 Pac. 82.

Where an officer had arrested an alleged proprietor of a soft-drink parlor for an alleged sale of intoxicating liquor to the officer and seized the fixtures found therein, he filing a complaint of a criminal nature in a justice's court which was dismissed, the subsequent filing of an unverified complaint in the district court, did not vest such court with jurisdiction, and its decree declaring the property forfeited was void. State v. Johnson et al., 69 Mont. 38, 220 Pac. 82.

Under this section, an arrest of an offender against the Prohibition Act or the seizure of intoxicating liquor or fixtures used in connection with its sale, without a warrant, is not justified unless the offense was committed in the presence of an officer. State v. Rouleau et al., 68 Mont. 529, 219 Pac. 1096.

Where a forfeiture of intoxicating liquor and fixtures is sought under this section, the state must establish as jurisdictional facts that the person making the seizure was an officer and that the offense against the Prohibition Act was committed in his presence, and in such a case recourse may not be had to presumptions. State v. Rouleau et al., 68 Mont. 529, 219 Pac. 1096.

A proceeding for the forfeiture of intoxicating liquors and property used in violation of the prohibition law and seized under this section, which proceeding is neither a criminal nor a civil action but is special in its nature, and in which the claimant was made a party defendant, costs may be awarded the claimant against the state when it is the losing party. State v. Rouleau et al., 68 Mont. 529, 219 Pac. 1096.

The proceeding authorized by this section, under which an officer may without a warrant arrest an offender against the liquor laws and seize the liquor, etc., is one in rem and independent of any criminal prosecution for the violation of such laws. State ex rel. Neville v. Mullen, 63 Mont. 50, 207 Pac. 634; Westover v. Calder et al., 64 Mont. 264, 273, 209 Pac. 306.

Where a sheriff at the time he seized liquor being carried in a handbag from which protruded the top of a demijohn knew that a banquet was being given at a hotel where persons were under the influence of intoxicating liquor and had been informed that the offender was conveying whisky to his employer at the hotel, he was warranted in seizing it without a search-warrant. (Mr. Justice Galen dissenting.) State ex rel. Neville v. Mullen, 63 Mont. 50, 207 Pac. 634.

To authorize the seizure of intoxicating liquors under this section, by an officer where the offense is committed in his presence, he need not have actual, personal knowledge that the law is being violated, it being sufficient if he have probable cause, i. e., knowledge of facts, actual or apparent, strong enough to justify a reasonable man that he has lawful grounds for the belief that the law is being violated to proceed without a warrant. State ex rel. Neville v. Mullen, 63 Mont. 50, 207 Pac. 634.

Where a peace officer, proceeding under this section, without a warrant seized intoxicating liquor being carried in a handbag, the offender was in no position on appeal from a judgment confiscating the property and ordering the liquor destroyed to complain that he had not been arrested or taken before a court or judge as required by that section. State ex rel. Neville v. Mullen, 63 Mont. 50, 207 Pac. 634.

This section prescribing the method of procedure for the arrest of one illegally transporting intoxicating liquor and seizure thereof, where the offense is committed in the presence of an officer, was not by necessary implication superseded by section 11073. State ex rel. Neville v. Mullen, 63 Mont. 50, 207 Pac. 634.

Cited in State v. Duncan, 74 Mont. 428, 431, 240 Pac. 978; State ex rel.

Muzzy v. Uotila et al., 71 Mont. 351, 355, L. 1917, in State v. Hopkins, 68 Mont. 229 Pac. 724; as section 9, chapter 143, 504, 511, 219 Pac. 1106.

11107. Replevin of liquor and other property forbidden.

Cited in State ex rel. King v. District Court, 70 Mont. 191, 201, 224 Pac. 862.

11109. Duty of attorney general, county attorneys and others to issue subpoena and investigate violations of law—Punishment for contempt.

Failure of the county attorney to conduct the preliminary examination of witnesses authorized by this section, before filing an information by leave of court, is not a ground for setting it aside, the section being directory only, and designed

to extend the scope of the prosecuting officer's authority to secure evidence, not to advise the defendant of the evidence he thus obtains. State v. Paine, 61 Mont. 270, 202 Pac. 203.

11111. What shall be stated and proved in prosecutions.

Under this section the information in prosecutions for violations of the liquor law need not allege the kind of liquor manufactured, sold, etc., a general description of the liquor by the designation "intoxicating liquor" being sufficient, whether the liquor in question be alcohol, brandy, whisky, etc., each of which is a beverage, or a liquid such as hair tonics, flavoring extracts, etc., containing one-half of one per centum or more of alcohol by volume of which is fit for beverage purposes. State v. Sedlacek, 74 Mont. 201, 239 Pac. 1002.

An information charging the offense of illegal transportation of intoxicating liquors need not allege the time of day, the means of conveyance, the particular brand of liquor transported, nor the termini of the route over which it was carried. State v. Dow, 71 Mont. 291, 229 Pac. 402.

The information in a prosecution for the unlawful sale and possession of in-

toxicating liquor need not allege the kind of liquor possessed or sold, the place where possessed or sold, or the name of the person to whom sold, this section specifically relieving the pleader from the necessity of alleging any of those facts. State v. Knilians, 69 Mont. 8, 220 Pac. 91.

This section was neither specifically nor in effect repealed by chapter 9, Ex. L. 1921, section 31 of the latter act, now section 11078, Revised Codes 1921, not being in conflict with the former section, and chapter 9, declaring that its provisions shall be deemed supplemental to and a part of the laws relating to intoxicating liquors. State v. Knilians, 69 Mont. 8, 220 Pac. 91.

Cited in State v. Jenkins, 66 Mont. 359, 363, 213 Pac. 590; State v. Marchindo, 65 Mont. 431, 456, 211 Pac. 1093; State v. Griebel, 65 Mont. 390, 397, 211 Pac. 321; State v. Fredericks, 65 Mont. 25, 27, 212 Pac. 495.

11116. Duty of peace officers to make known evidence—Penalty.

This and the following sections were cited as sections 20 and 21, chapter 143,

L. 1917, in State v. District Court, 61 Mont. 558, 567, 202 Pac. 756.

11117. Procedure for removal of public officers for failure to perform duty.

Cited in State ex rel. Brown v. District Court, 72 Mont. 213, 218, 232 Pac. 201.

11118. Original packages of intoxicating liquors not to be broken open—Penalty.

Cited in State v. Gardner, 77 Mont. 8, 14, 249 Pac. 574.

11121. Punishment for misdemeanor.

This section, so far as it prescribes the punishment for the unlawful possession and transportation of intoxicating liquor, for which offense a special penalty is not provided, was impliedly repealed

by section 11075, with which the former is in conflict, and therefore the latter section is controlling. State v. Miller, 69 Mont. 1, 220 Pac. 97.

11122. Jurisdiction of district courts.

The district and not the justice court has original jurisdiction in criminal actions for violation of the Prohibition Act. *State v. Sorenson*, 65 Mont. 65, 210 Pac. 752.

In a prosecution for maintaining a common nuisance under section 11066, made supplemental to and a part of the laws relating to intoxicating liquor, the court

had original jurisdiction under this section, notwithstanding the offense is made a misdemeanor by section 11066. *State v. Bowker*, 63 Mont. 1, 205 Pac. 961.

Cited in *State v. Certain Intoxicating Liquors*, 71 Mont. 79, 83, 86, 227 Pac. 472; *State v. Johnson et al.*, 69 Mont. 38, 42, 220 Pac. 82.

CHAPTER 30.**MAINTENANCE OF COMMON NUISANCES IN CONNECTION WITH THE SALE OF INTOXICATING LIQUORS, OPIUM, PROSTITUTION AND GAMBLING.****11123. Definition of "person" and "building."**

Sections 11123-11133 were cited in *State ex rel. Stewart v. District Court*,

77 Mont. 361, 373, 49 A. L. R. 627, 251 Pac. 137.

11124. Certain buildings declared nuisances.

Sections 11124 and 11125 declare the maintenance of a house of prostitution or for wine-room purposes a nuisance and provide for its abatement. Sections 11066 and 11067 provide that buildings or rooms where intoxicating liquor is sold are a common nuisance and for

their abatement, all other acts in conflict with their provisions being repealed. Held, that the latter act is not in conflict with the former one but simply supersedes it, and therefore does not supersede, it. *State ex rel. Bourquin v. Morris et al.*, 67 Mont. 40, 214 Pac. 332.

11125. County attorney to abate nuisance—When warrant may issue.

Applied with section 11124 in *State ex rel. Bourquin v. Morris et al.*, 67 Mont. 40, 42, 214 Pac. 332.

11127. Precedence of actions—Dismissal—Costs.

Cited in *State v. Peters et al.*, 72 Mont. 12, 18, 231 Pac. 392.

11129. Order of abatement—Sale of fixtures—Closing of buildings—Fees—Service.

For case involving the abatement of a building as a gambling and liquor nuisance and discussion of the sufficiency of

the judgment of abatement, see *State ex rel. Lamey v. Young*, 72 Mont. 408, 234 Pac. 248.

CHAPTER 33.**GAMBLING.****11159. Gambling games prohibited—Penalty.**

A so-called mint vending machine which by the insertion of a nickel and pulling a lever will bring the operator a package of mint of the value of five cents, and which may or may not in addition bring to him trade checks good for five cents in trade (and which also may be operated by the insertion of a trade check, in which event trade checks but not mint may or may not be paid), is a gambling device; the machine appeals to the operator's propensities to gamble and

lures him into continuing his play in the hope that he may gain an amount much greater than the amount risked. *Marvin v. Sloan et al.*, 77 Mont. 174, 250 Pac. 443. See, also, *State v. Mott*, 72 Mont. 306, 233 Pac. 602, involving game of stud-horse poker.

Slot-vending machine as gambling device, note, 38 A. L. R. 73.

For text treatment of this subject see vol. 12 Cal. Jur. 1089-1090.

11160. Possession of gambling implements prohibited.

Cited in *Marvin v. Sloan et al.*, 77 Mont. 174, 178, 250 Pac. 443.

11173. Losses at gambling may be recovered in civil action.

The complaint in an action to recover the amount of two dollars lost by plaintiff as an alleged bet on a horse-race, with exemplary damages, under this section, alleging in substance that defendant Fair Association had given notice that it would conduct horse-racing for purses, at which any owner or co-owner of a horse competing in the races would be required to pay an entrance fee of two dollars and that no person other than such owner or co-owners would be permitted to pay an entrance fee; that plaintiff representing himself to be a co-owner

of a certain horse paid the required fee for that horse in a race to be run; that the horse did not win; that the purse plus an amount equal to the entrance fees for that race was paid to the owners or co-owners of the winning horse; that the purse was made up of funds belonging to the association and that the association did not have any interest in the outcome of the race, etc., did not state a cause of action and a demurrer thereto was properly sustained. *Toomey v. Penwell*, 76 Mont. 166, 245 Pac. 943.

11180. Racing bets unlawful.

The word "game" as employed in this section, providing that a person who loses at any prohibited gambling game may recover the amount of his loss, etc., is sufficiently comprehensive to include a horse-race run on a bet or wager.

Toomey v. Penwell, 76 Mont. 166, 245 Pac. 943.

Racing as gaming within statute, note, 45 A. L. R. 998.

CHAPTER 37.**MISCELLANEOUS CRIMES AGAINST THE PUBLIC HEALTH AND SAFETY.****11239. Selling opium, etc.**

To the extent of any conflict between them, this section is superseded by section 3189, as enacted by chapter 202,

L. 1921. *State v. Wong Fong*, 75 Mont. 81, 241 Pac. 1172.

CHAPTER 39.**EMBEZZLEMENT AND OTHER OFFENSES BY PUBLIC OFFICERS.****11320. "Public moneys" as used in the preceding section defined.**

Cited in *State v. McGraw*, 74 Mont. 152, 158, 240 Pac. 812.

CHAPTER 41.**BURGLARY AND HOUSEBREAKING—POSSESSION OF BURGLARIOUS INSTRUMENTS AND DEADLY WEAPONS.****11346. Burglary defined.**

Cited in *State v. Larson*, 75 Mont. 274, 277, 243 Pac. 566.

11349. Word "enter" defined.

Cited in *State v. Larson*, 75 Mont. 274, 277, 243 Pac. 566.

CHAPTER 42.

FORGERY AND COUNTERFEITING.

11355. Forgery of wills, conveyances, etc.

The essential elements of the crime of forgery are a false making of an instrument in writing; a fraudulent intent, and a writing which, if genuine, might apparently be of legal efficacy or the foundation of legal liability. *State v. Alexander et al.*, 73 Mont. 329, 236 Pac. 542.

Alteration of receipt, canceled check or other voucher as forgery, note, 26 A. L. R. 1058.

Genuine making of instrument for purpose of defrauding, notes, 41 A. L. R. 229; 46 A. L. R. 1529; 51 A. L. R. 568.

For text treatment of this subject see vol. 12 Cal. Jur. 648 et seq.

CHAPTER 43.

LARCENY.

11368. Larceny defined.

Where the legal title to a bond was in a bank as trustee and in the possession of it in the cashier only by virtue of his office, a prosecution against the latter under subdivision 2 of this section, under a charge of larceny by bailee, could not be maintained. *State v. Wallin*, 60 Mont. 332, 199 Pac. 285.

Embezzlement and larceny distinguished, notes, 11 A. L. R. 801; 13 A. L. R. 319.

Larceny by appropriating money or proceeds of paper mistakenly delivered in excess of the amount due or intended, note, 14 A. L. R. 894.

Larceny as affected by purpose to take or retain property in payment of, or as

security for, a claim, notes, 13 A. L. R. 142; 19 A. L. R. 303.

Appropriation of property after obtaining possession by fraud as larceny, note, 26 A. L. R. 381.

What amounts to asportation which will support charge of larceny, note, 19 A. L. R. 724.

Larceny by finder of property, note, 36 A. L. R. 372.

Purchase of property on credit without intending to pay for it as larceny, note, 35 A. L. R. 1336.

Retaking of property lost at gaming as larceny, notes, 35 A. L. R. 1461; 42 A. L. R. 741.

For text treatment of this subject see vol. 15 Cal. Jur. 884.

11369. Uttering fraudulent checks or drafts—Evidence.

Defendant was convicted of uttering a fraudulent check. The check was postdated and at the time it was given to the complaining witness he was advised by defendant that he did not then have sufficient funds in the bank on which it was drawn (located outside the state) but that by the time it was received by the bank it would be all right. Held, that the gist of the offense charged under this section, being fraudulent intent, the evidence was insufficient to show such intent and that the representation made was more in the nature of a future promise than that of a misrepresentation of an

existing fact and therefore did not warrant conviction. *State v. Patterson*, 75 Mont. 315, 243 Pac. 355.

Cited in *In re McCue*, 77 Mont. 47, 53, 248 Pac. 187; *Hawaiian Pineapple Co. v. Browne*, 69 Mont. 140, 147, 220 Pac. 1114.

Constitutionality of "worthless check" acts, note, 23 A. L. R. 459.

Statutes directed specifically against use of worthless, false or bogus check or draft, notes, 35 A. L. R. 375; 43 A. L. R. 49.

For text treatment of this subject see vol. 12 Cal. Jur. 481.

11371. Grand larceny defined.

Under this section, the value of a cow alleged to have been stolen is not a matter in issue; therefore refusal to permit a witness to be cross-examined as to the value of the animal was not an abuse

of discretion. *State v. McClain et al.*, 76 Mont. 351, 246 Pac. 956.

For text treatment of this subject see vol. 15 Cal. Jur. 889, 897, 904.

11377. Larceny of written instruments.

An instruction in a prosecution for the larceny of promissory notes that the amount of money due on the notes or secured to be paid thereby and remaining unsatisfied was their value was correct under this section, and one offered by defendant to the effect that evidence relating to the instrument should be disregarded because it has not been shown that they had any value was properly

refused, where one of the notes was introduced in evidence and the value of the other was shown by books of account, thus making out a prima facie case for the state. *State v. Cassill et al.*, 71 Mont. 274, 229 Pac. 716.

For text treatment of this subject see vol. 15 Cal. Jur. 898, 904.

11382. Conversion by trustee, larceny.

The facts incident to a fraudulent transfer of credit on the books of a bank were examined and held not to constitute larceny from the bank as charged in the information in *State v. Rarey*, 72 Mont. 270, 233 Pac. 615.

An information charging that while

acting as cashier of a bank defendant feloniously converted a Liberty bond to his own use was insufficient for failure to allege that the bond came into his possession by virtue of his office. *State v. Wallin*, 60 Mont. 332, 199 Pac. 285.

11384. Claim of title, ground of defense.

Cited in *State v. Cassill et al.*, 71 Mont. 274, 281, 229 Pac. 716; as section

8658, Revised Codes, in *State v. Wallin*, 60 Mont. 332, 341, 199 Pac. 285.

11385. Larceny of gas or electricity.

Cited in *Clifford v. Great Falls Gas Co.*, 68 Mont. 300, 305, 216 Pac. 114.

CHAPTER 44.**EXTORTION.****11389. Extortion defined.**

In an action to recover money claimed to have been involuntarily paid, the complaint simply averring by way of conclusion that defendants by coercion, threats and intimidation and by putting plaintiff in fear, extorted from him, was insufficient to state a cause of action, in the absence of an allegation of facts con-

stituting the legal basis for the charge of involuntary payment. *Kozasa v. Northern Pacific Ry. Co. et al.*, 61 Mont. 233, 201 Pac. 682.

For text treatment of this subject see vol. 12 Cal. Jur. 374 et seq.

CHAPTER 45.**FALSE PERSONATION AND CHEATS—FALSE ADVERTISING—FAKERS.****11410. Obtaining money or property by false pretenses.**

Information charging the obtaining of money from a bank under false pretense held sufficient under this section and that there was no variance between the allegations and proof in *State v. Mason*, 62 Mont. 180, 204 Pac. 358.

Obtaining money for goods not intended to be delivered as false pretense, note, 17 A. L. R. 199.

May offense of obtaining money or property by false pretenses or confidence game be predicated on statement in writing concerning financial ability of one seeking a loan, note, 24 A. L. R. 400.

For text treatment of this subject see vol. 12 Cal. Jur. 451 et seq.

11416. Selling or removing mortgaged property to defraud mortgagee.

Cited in *Averill Machinery Co. v. Taylor et al.*, 70 Mont. 70, 79, 223 Pac. 918.

CHAPTER 49.

FRAUDS IN THE MANAGEMENT OF CORPORATIONS.

11443. Receiving deposits in insolvent banks.

Section 986, Penal Code of 1895, making it a crime for an officer of a bank to receive deposits knowing the bank to be insolvent, was impliedly repealed by section 5, substitute for Senate Bill No. 887, L. 1899, page 111, the two acts being so inconsistent as to render it impossible to reconcile them; that therefore the amendment of section 986 after such repeal, attempted by chapter 84, L. 1907,

which amended section was brought forward into the Revised Codes of 1921 as section 11443, was void, and hence the indictment, based thereon, did not state a public offense, entitling complainant to his release from custody. In re Naegele, 70 Mont. 129, 224 Pac. 269.

For text treatment of this subject see vol. 4 Cal. Jur. 205.

CHAPTER 51.

MALICIOUS INJURY TO RAILROADS.

11473.1. Penalty for careless deposits near tracks. Every person who, within the state of Montana while engaged in public or private road work, or otherwise, and whether wilfully, carelessly or negligently, leaves or deposits any earth, gravel, rock, or other hard substances, alongside of, upon, or between the rails of any railroad, where any public or private highway crosses such railroad which will, by filling the grooves for the flanges of the wheels or otherwise endanger travel on such railroad and which may tend to or does derail locomotives or cars thereon shall be guilty of a misdemeanor and on conviction shall be fined not less than ten dollars (\$10), nor more than one hundred dollars (\$100), or by imprisonment in the county jail not more than six (6) months, or both such fine and imprisonment.

En. Sec. 1, Ch. 41, L. 1927.

CHAPTER 52.

MALICIOUS MISCHIEF GENERALLY.

11478. Use of automobiles without consent of owners—Punishment.

Defendant was charged with taking and using an automobile without the consent of the owner, under this section, which makes the offense punishable by fine or imprisonment in the county jail, or by imprisonment in the state penitentiary not exceeding five years. The information was not filed until fourteen months after the commission of the of-

fense. Held, that the district court erred in sustaining a demurrer to the pleading on the ground that, the offense being a misdemeanor, the limitation of one year fixed by section 11724, within which the information could be filed had expired, and holding that it was without jurisdiction to proceed. State v. Atlas, 75 Mont. 547, 244 Pac. 477.

11482. Injuring fences, building fires and hunting on premises of another when forbidden.

Where land is inclosed a person who hunts thereon without the consent of one entitled to its possession is a trespasser, and where land is posted warning persons against hunting thereon, he who

does so in disregard of such warning is subject to criminal prosecution under this section. Herrin v. Sutherland, 74 Mont. 587, 42 A. L. R. 937, 241 Pac. 328.

CHAPTER 53.

CRUELTY TO ANIMALS.

11515A. What facts to be alleged and proved. In any prosecution for the violation of the provisions of section 11515 of the Revised Codes of 1921, prohibiting the malicious killing, maiming or poisoning of livestock, not the property of the defendant it shall not be necessary for the state to allege in the complaint or information or to prove the ownership of the livestock so alleged to have been killed, maimed or poisoned, but it shall be sufficient to allege in the complaint or information that the owner of such livestock is unknown and prove that the livestock killed, poisoned, maimed was not the property of the defendant.

En. Sec. 1, Ch. 62, L. 1923.

CHAPTER 54.

MISCELLANEOUS OFFENSES.

11528. Penalty for leaving gates open. Every person who wilfully leaves open a gate, when found closed, leading in or out of any inclosed premises, whether inclosed by a lawful fence or not, is punishable by a fine of not less than ten (\$10) dollars, nor more than two hundred fifty (\$250) dollars, or by imprisonment in the county jail not more than three (3) months or by both such fine and imprisonment. This act shall not apply to cities and towns.

Amd. Sec. 1, Ch. 50, L. 1923.

11559. Unlawful entries in races.

The word "purse" as used in the Revised Codes is synonymous with "prize" or "premium," and the words "purse prize, premium, stake or sweepstakes" appearing in this section, permitting horse-races, mean some valuable thing of-

ferred by a person for the doing of something by others, into the strife for which he does not enter and which thing he has no chance of gaining. *Toomey v. Penwell*, 76 Mont. 166, 245 Pac. 943.

11579. Defrauding inn and hotel keepers, etc.—Penalty.

Cited in *Saner v. Bowker*, 69 Mont. 463, 467, 222 Pac. 1056.

CHAPTER 55.

PUNISHMENTS—ATTEMPTS AND OTHER GENERAL PROVISIONS.

11581. Acts made punishable by different provisions of this code.

In prosecutions under the intoxicating liquor law, section 11078, which provides that separate offenses may be united in the information in separate counts and defendant tried at one trial and a penalty for all offenses imposed, controls notwith-

standing the provisions of this section. *State v. Marchindo*, 65 Mont. 431, 211 Pac. 1093.

For text treatment of this subject see vol. 7 Cal. Jur. 959; vol. 8 Cal. Jur. 642.

11590. Attempts to commit crimes, when punishable.

Cited in *State v. Hennessy*, 73 Mont. 20, 23, 234 Pac. 1094; *State v. Reagin*, 64 Mont. 481, 490, 210 Pac. 86.

11593. Second offense, how punished after conviction of former offense.

Cited in *State v. O'Neill*, 76 Mont. 526, 534, 248 Pac. 215; as section 8897, Revised Codes, in *State v. Livermore*, 59 Mont. 362, 364, 196 Pac. 977.

11596. Second term of imprisonment, when to commence.

Cited in *State v. Sorenson*, 75 Mont. 30, 36, 241 Pac. 616; In *re Pyle*, 72 Mont. 494, 498, 234 Pac. 254.

11597. When term of imprisonment commences, etc.

Cited in *Anderson et al. v. Wirkman*, 67 Mont. 176, 187, 215 Pac. 224.

11600. Civil rights of convict suspended.

This and the three following sections were cited as sections 8904 to 8907, Revised Codes, in *State v. Stein*, 60 Mont. 441, 446, 447, 199 Pac. 278.

11603. Convict competent witness.

The provision of this section, to the effect that the conviction of a person of any offense may be proved for the purpose of affecting the weight of his testimony, refers to conviction for a felony, and therefore refusal to permit cross-examination of a witness for the state as to his former conviction of a misdemeanor was proper. *State v. Stein*, 60 Mont. 441, 199 Pac. 278.

PART II.**Criminal Procedure.****CHAPTER 1.****RIGHTS OF DEFENDANTS.****11607. Public offenses—How prosecuted.**

Cited as section 8911, Revised Codes, in *State v. District Court*, 61 Mont. 558, 562, 569, 202 Pac. 756.

11608. Criminal action defined.

Cited in *State ex rel. Stewart v. District Court*, 77 Mont. 361, 372, 49 A. L. R. 627, 251 Pac. 137; *State v. Lewis*, 67 Mont. 447, 451, 216 Pac. 337.

CHAPTER 2.**DEFINITIONS—PROSECUTION OF CRIMINAL ACTIONS—JURISDICTION OF COURTS.****11617. Information.**

Cited in *State v. Johnson et al.*, 69 Mont. 38, 43, 220 Pac. 82; as section 8921, Revised Codes, in *State v. Vuckovich*, 61 Mont. 480, 491, 203 Pac. 491.

11619. Who are magistrates.

Cited in *State v. Johnson et al.*, 69 Mont. 38, 44, 220 Pac. 82.

11622. Criminal actions in district court.

Cited in *State v. Johnson et al.*, 69 Mont. 38, 43, 220 Pac. 82.

11624. Leave to file information.

Where a deputy county attorney appeared in open court and orally moved for leave to file an information presenting at the same time a written request signed by the county attorney which was filed immediately upon granting of the request, the court properly overruled defendant's motion to quash the information

based upon the ground that leave to file had been granted on oral request, contrary to this section. *State v. Kacar*, 74 Mont. 269, 240 Pac. 365.

Cited as section 8928, Revised Codes, in *State v. Vuckovich*, 61 Mont. 480, 491, 203 Pac. 491.

11625. Order of court granting.

Cited in *State v. Kacar*, 74 Mont. 269, 274, 240 Pac. 365; as section 8929, Revised

Codes, in *State v. Vuckovich*, 61 Mont. 480, 491, 203 Pac. 491.

11626. County attorney to file information.

Cited in *State v. Kacar*, 74 Mont. 269, 274, 240 Pac. 365.

11630. Jurisdiction of justices of the peace.

Cited in *State v. Sorenson*, 65 Mont. 65, 69, 210 Pac. 752.

This and section 11631 were cited in *State v. Bowker*, 63 Mont. 1, 4, 205 Pac.

961; as section 8934, Revised Codes, in *Hasson v. Earll*, 61 Mont. 389, 392, 203 Pac. 581.

CHAPTER 4.**SECURITY TO KEEP THE PEACE.****11642. Security to keep the peace, when required.**

Cited as section 8946, Revised Codes, in *Folsom v. Fisco et al.*, 62 Mont. 194, 198, 204 Pac. 367.

11643. Effect of giving or refusing to give security.

Under this section declaring that an order of a justice of the peace committing one to jail for failure to give bond to keep the peace must specify the cause of commitment, the requirement to give security, the amount thereof and the omission to give it, a commitment which failed to state that the accused had not given security, and which was not directed to the sheriff and did not contain

any direction as to what he should do under it (sec. 11790), was so defective as to afford the sheriff no protection in an action for damages for false imprisonment. *Folsom v. Fisco et al.*, 62 Mont. 194, 204 Pac. 367.

For text treatment of this subject see vol. 4 Cal. Jur. 480.

CHAPTER 6.**SUPPRESSION OF RIOTS.****11663. Sheriff to have charge of national guard.**

Cited in *McCarthy v. Anaconda Copper Mining Co.*, 70 Mont. 309, 318, 225 Pac. 391.

CHAPTER 8.**REMOVAL OF OFFICERS OTHERWISE THAN BY IMPEACHMENT.****11687. Officers subject to removal.**

Cited as section 8991 in *State v. District Court*, 61 Mont. 558, 562, 202 Pac. 756.

11688. Accusation to be presented by the grand jury.

An officer may not be charged with nonfeasance under section 11702, and convicted on proof of malfeasance, the prosecution charging which must be instituted under this section. *State v. Beazley*, 77 Mont. 430, 250 Pac. 1114.

Where wilful or corrupt malfeasance in office is charged, outster proceedings must be had under the provisions of this section, and the accused officer is entitled to a jury trial; where the charge is nonfeasance only, the proceeding is, under section 11702, triable summarily by the court without the intervention of a jury. *State ex rel. Beazley v. District Court*, 75 Mont. 116, 241 Pac. 1075.

Where removal of a county, district, township or county officer is sought for

wilful or corrupt misconduct or malfeasance in office—acts of commission—the jurisdiction of the district court can, under this section, be invoked only by an accusation presented by the grand jury; where, however, the charge is wilful refusal or neglect to perform official duties, constituting nonaction, jurisdiction may be invoked by the filing of a verified petition by any person, under section 11702, whereupon the court may try the accused summarily without the aid of a jury. *State ex rel. Hessler v. District Court*, 64 Mont. 296, 209 Pac. 1052.

For text treatment of this subject see vol. 21 Cal. Jur. 985 et seq.

11697. Trial by jury.

Cited in *State v. Beazley*, 77 Mont. 430, 441, 250 Pac. 1114; *State ex rel.*

Hessler v. District Court, 64 Mont. 296, 298, 209 Pac. 1052.

11702. Removal of public officers by summary proceedings.

A sheriff was sought to be removed summarily under this section, under a charge of alleged nonfeasance in office preferred by the county attorney. The evidence introduced at the trial showed his active participation in the crime of bribery, demanding money to prevent official action on his part. Held, that his offense constituted malfeasance in office which was triable only, on accusation presented by the grand jury, with the aid of a jury, and that the trial judge was without jurisdiction to remove him on the proof submitted. *State v. Beazley*, 77 Mont. 430, 250 Pac. 1114.

Under the rule that one may not be charged with a specific offense and convicted of another distinct and nonincluded offense, an officer may not be charged with nonfeasance under this section, and convicted on proof of malfeasance, the prosecution charging which must be instituted in pursuance of section 11688. *State v. Beazley*, 77 Mont. 430, 250 Pac. 1114.

Active participation by a sheriff in the commission of a crime is malfeasance in office, an accusation charging which is triable by a jury, and the fact that the pleader in the same count also charges nonfeasance, to wit, failure of the officer to arrest his partner in crime, does not have the effect of bringing the accusation within the purview of this section, so as to make it triable by the court. *State ex rel. Beazley v. District Court*, 75 Mont. 116, 241 Pac. 1075.

One charging a district or county officer

with an act of misfeasance or malfeasance in office, a matter of which the grand jury must take cognizance, cannot by pleading that after such act had been done the officer wilfully refused and neglected to undo it bring the accusation within the purview of this section, under which an officer may be tried summarily for such refusal or neglect, nor may he justify the procedure followed by the argument *ab inconvenienti*. *State ex rel. Hessler v. District Court*, 64 Mont. 296, 209 Pac. 1052.

An officer (county clerk) charged with wilful neglect of duty is not entitled to a jury trial in a proceeding for his removal from office. *State ex rel. Bullock v. District Court et al.*, 62 Mont. 600, 205 Pac. 955.

Proceedings for the removal of civil officers under this section, are criminal in their nature, and therefore neither party has the right to file an affidavit disqualifying a district judge for imputed bias or prejudice under section 8868. (Mr. Justice Holloway, dissenting.) *State ex rel. Houston v. District Court*, 61 Mont. 558, 202 Pac. 756.

Removal of officer for misconduct during previous term, note, 17 A. L. R. 279.

Removal of officer for violation of Blue Sky Laws, notes, 24 A. L. R. 536; 27 A. L. R. 1178; 30 A. L. R. 1343; 40 A. L. R. 1019.

For text treatment of this subject see vol. 21 Cal. Jur. 985 et seq.

CHAPTER 9.

LOCAL JURISDICTION OF PUBLIC OFFENSES.

11707. Offense committed partly in one county and partly in another.

Under the rule declared by this section, that where the acts constituting or requisite to the consummation of an offense occurred in two counties, trial may be had in either, held that where defendants, president and cashier of a bank, prepared an alleged false report to

the superintendent of banks in P. county and transmitted it by mail to the superintendent in L. & C. county, the district court of the former county had jurisdiction. *State v. Cassill et al.*, 70 Mont. 433, 227 Pac. 49.

CHAPTER 10.

TIME OF COMMENCING CRIMINAL ACTIONS.

11723. Limitation of five years in all other felonies.

Cited in *State v. Atlas*, 75 Mont. 547, 554, 244 Pac. 477.

11724. Limitation of one year in misdemeanors.

Under this section, providing that an information for a misdemeanor must be filed within one year after its commission, and under section 11725, declaring that if defendant after commission of the offense leaves the state the information may be filed within the time limited after his return, the time during which he was absent not being part of the limitation, the state's burden of proving that defendant, who had left the state with intention of going to Ireland, was outside the state for a period of at least twenty days was

met by testimony a legitimate inference from which was that a trip to Ireland, where defendant visited a number of cities, and return must have involved an absence from the state for at least that length of time. *State v. Knilians*, 69 Mont. 8, 220 Pac. 91.

Cited in *State v. Atlas*, 75 Mont. 547, 550, 244 Pac. 477.

For text treatment of this subject see vol. 7 Cal. Jur. 923.

11725. Exception when defendant is out of the state.

Applied with section 11724 in *State v. Knilians*, 69 Mont. 8, 220 Pac. 91.

CHAPTER 11.

THE COMPLAINT.

11729. Duty to make complaint.

The provision of this section, that a person who has reason to believe that a crime has been committed and that a certain person has committed it, must make complaint before a magistrate, does not require one to disclose to a county

attorney evidence within his knowledge tending to disprove the defendant's guilt, and an instruction that it does was erroneous. *State v. Jackson*, 71 Mont. 421, 230 Pac. 370.

11731. Arrest without warrant.

Cited in *State v. Johnson et al.*, 69 Mont. 38, 44, 220 Pac. 82.

CHAPTER 13.

ARREST—BY WHOM AND HOW MADE—RETAKING AFTER ESCAPE.

11753. Arrests by peace officers.

Cited in *State ex rel. Beazley v. District Court*, 75 Mont. 116, 120, 241 Pac. 1075; *State ex rel. Merrill v. District*

Court, 72 Mont. 77, 80, 231 Pac. 1107; *State ex rel. Neville v. Mullen*, 63 Mont. 50, 58, 207 Pac. 634.

11754. Arrests by private persons.

For a general discussion of what constitutes an arrest and of the authority of a private person to arrest without a warrant, see *State ex rel. Sadler v. District Court*, 70 Mont. 378, 225 Pac. 1000.

To entitle a private person to make an arrest under this section, for a public offense committed or attempted in his presence, the facts and circumstances must be such that upon them alone he

would be justified in making a complaint upon which a warrant might issue, i. e., the facts and circumstances must be sufficient to warrant the conclusion that there is probable cause for believing that an offense is being committed. *State ex rel. Sadler v. District Court*, 70 Mont. 378, 225 Pac. 1000.

For text treatment of this subject see vol. 3 Cal. Jur. 119.

11761. Doors and windows may be broken, when.

Cited in *State ex rel. Merrill v. District Court*, 72 Mont. 77, 81, 231 Pac. 1107.

CHAPTER 14.**EXAMINATION AND COMMITMENT OR DISCHARGE OF THE DEFENDANT.****11776. On postponement, defendant to be committed or discharged on bail.**

By a deposit of cash by one accused of crime, in lieu of bail, with a justice of the peace to assure his appearance at a preliminary examination, the accused enters into a contract with the state, which, in legal effect, impliedly contains all the terms of a bail bond, if given for the same purpose, the gist of the contract in either case being that he will appear

in the justice court at a specified time and not in any other court, nor in the justice court at any other time than that specified. *Hassan v. Earll*, 61 Mont. 389, 202 Pac. 581.

For text treatment of this subject see vol. 7 Cal. Jur. 971.

11783. Reduction to writing and authentication of testimony.

Cited in *In re Claims of Hyde*, 73 Mont. 363, 366, 236 Pac. 248; as section

9087, Revised Codes, in *Hawley v. Richardson*, 60 Mont. 118, 126, 198 Pac. 450.

11785. Defendant, when and how discharged.

Cited as section 9089, Revised Codes, in *Hawley v. Richardson*, 60 Mont. 118, 126, 198 Pac. 450.

11786. When and how to be committed.

Cited as section 9090, Revised Codes, in *Robinson v. Gordon*, 61 Mont. 124, 129, 201 Pac. 573.

CHAPTER 15.**PRELIMINARY PROVISIONS—FILING THE INFORMATION.****11798. Offenses, how prosecuted.**

Cited as section 9102, Revised Codes, in *State v. District Court*, 61 Mont. 558, 563, 569, 202 Pac. 756.

11801. Information to be filed.

The district court may grant leave to file an information without previous examination of defendant by a committing magistrate. *State v. Vuckovich*, 61 Mont. 480, 203 Pac. 491.

Cited in *State v. Tesla et al.*, 69 Mont. 503, 508, 223 Pac. 107.

CHAPTER 16.

THE GRAND JURY—ITS FORMATION, POWERS AND DUTIES—FINDING AND PRESENTING AN INDICTMENT.

11833. Indictment must be found by five jurors, indorsed, etc.

Cited in *State v. Johnson et al.*, 69 Mont. 38, 43, 220 Pac. 82.

CHAPTER 17.

RULES OF PLEADING AND FORM OF THE INFORMATION AND INDICTMENT.

11841. Form of and rules of pleading.

Cited in *State v. Polich*, 70 Mont. 523, 527, 226 Pac. 519.

11843. Indictment, or information, what to contain.

Information examined and held sufficient as against the charge of the inadvertent use of the figures "19122" instead of 1922 in describing the year of the offense and the charge that it failed to allege that the crime was committed in M. county by the use of the words "then and there being," etc., in *State v. Polich*, 70 Mont. 523, 226 Pac. 519.

Where two defendants, tried separately, had entered into a conspiracy to commit robbery, and in the perpetration of the offense an officer was killed by one of them, the information against the other charging a premeditated killing need not set forth the facts constituting the crime of robbery, or allege that in the attempt to commit the latter crime, the

homicide was committed. *State v. Bolton*, 65 Mont. 74, 212 Pac. 504.

Cited in *State v. Redmond*, 73 Mont. 376, 378, 237 Pac. 486; *State v. Dow*, 71 Mont. 291, 298, 229 Pac. 402; *State v. Hem*, 69 Mont. 57, 62, 220 Pac. 80; *State v. Griebel*, 65 Mont. 390, 395, 211 Pac. 321; as section 9147, Revised Codes, in *State v. Paine*, 61 Mont. 270, 273, 202 Pac. 203.

This section and section 11845 were cited as sections 9147-9149, Revised Codes, in *State v. Fowler*, 59 Mont. 346, 196 Pac. 992.

For text treatment of this subject see vol. 14 Cal. Jur. 20, 25, 45.

11844. Form of.

An information charging illegal transportation of intoxicating liquor in the language of this section, that defendant "at the county of M. did wilfully, wrongfully and unlawfully transport certain intoxicating liquors," etc., was sufficient as against the contention that it was fatally defective for failure to charge that the offense was committed within the jurisdiction of the court; if deemed

insufficient it was the duty of defendant to apply for a bill of particulars in advance of the trial. *State v. Redmond*, 73 Mont. 376, 237 Pac. 486.

Cited in *State v. Grasswick*, 77 Mont. 326, 329, 250 Pac. 613; *State v. Polich*, 70 Mont. 523, 527, 226 Pac. 519.

For text treatment of this subject see vol. 14 Cal. Jur. 20, 21, 54.

11845. It must be direct and certain.

In view of the provisions of this section, requiring that the information must be direct and certain, *inter alia*, as to the particular circumstances of the offense charged when they are necessary to constitute a complete offense, an information charging one with seditious utterances should set forth the fact whether the words were uttered in private conversation with a single person or from a public platform, or were disseminated

through the medium of printed articles. *State v. McGlynn*, 60 Mont. 416, 199 Pac. 708.

Cited in *State v. Dow*, 71 Mont. 291, 299, 229 Pac. 402; *State v. Bolton*, 65 Mont. 74, 80, 212 Pac. 504; *State v. Hem*, 69 Mont. 57, 62, 220 Pac. 80.

For text treatment of this subject see vol. 14 Cal. Jur. 25, 31, 47.

11847. Must charge but one offense and in one form, except where it may be committed by different means.

While under this section an information must charge but one offense, under section 11908 any number of offenses against the Prohibition Act may be charged in separate counts in one information and where defendant pleaded to the information in a liquor prosecution containing a number of counts, any informality in that respect did not tend to his prejudice and must, therefore, under section 11874 be disregarded on

appeal. *State v. Grasswick*, 77 Mont. 326, 250 Pac. 613.

Cited in *State v. Marchindo*, 65 Mont. 431, 439, 211 Pac. 1093.

Theft of property or receiving stolen property belonging to different persons, note, 18 A. L. R. 1077.

For text treatment of this subject see vol. 14 Cal. Jur. 64 et seq.

11848. Statement as to time when offense was committed.

Under the prohibitory act it is a public offense to possess liquor unlawfully at any time, hence time is not an ingredient of the offense within the meaning of this section, providing that the precise time at which it was committed need not be stated in the information, it being sufficient if it is alleged that its commission occurred at any time before filing

thereof, except where the time is a material ingredient in the offense. *State v. Terry*, 77 Mont. 297, 250 Pac. 612.

Cited in *State v. Polich*, 70 Mont. 523, 525, 226 Pac. 519.

For text treatment of this subject see vol. 14 Cal. Jur. 42.

11850. Construction of words used.

Sections 11850-11852 were cited in *State v. Hem*, 69 Mont. 57, 62, 220 Pac. 80.

11852. Indictment or information, when sufficient.

Cited in *State v. Redmond*, 73 Mont. 376, 378, 237 Pac. 486; *In re Lockhart*, 72 Mont. 136, 145, 232 Pac. 183; *State v. Hem*, 69 Mont. 57, 62, 220 Pac. 80; *State v. Griebel*, 65 Mont. 390, 395, 211 Pac. 321.

This and the following section were cited as sections 9156, 9157, Revised Codes, in *State v. Vuckovich*, 61 Mont. 480, 491, 203 Pac. 491.

11853. Not insufficient for defect of form not tending to prejudice defendant.

A deputy county attorney may present an information in his own name; hence the fact that an information was signed by him instead of by the county attorney did not render it invalid; at most his act, while perhaps improper from an ethical standpoint, was no more than an irregularity which could not affect appellant's substantial rights and was therefore insufficient to warrant reversal of

the judgment under this section. *State v. Larson*, 75 Mont. 274, 243 Pac. 566.

Cited in *State v. Polich*, 70 Mont. 523, 526, 226 Pac. 519; *In re Lockhart*, 72 Mont. 136, 145, 232 Pac. 183; *State v. Hem*, 69 Mont. 57, 62, 220 Pac. 80.

For text treatment of this subject see vol. 14 Cal. Jur. 72.

11854. Presumptions of law, etc., need not be stated.

Cited in *State v. Griebel*, 65 Mont. 390, 395, 211 Pac. 321.

11863. Distinction between accessory before the fact and principal abrogated.

Cited in *State v. Bolton*, 65 Mont. 74, 81, 212 Pac. 504.

11870. Amendment followed on trial, when.

Power to grant permission to the county attorney in a prosecution under the liquor

law to amend the information at the close of the state's case by changing the

date on which the offense was charged to have been committed is conferred by this section, and said section is not open to

constitutional objection. *State v. Terry*, 77 Mont. 297, 250 Pac. 612.

Cited in *State v. Sedlacek*, 74 Mont. 201, 208, 239 Pac. 1002.

11874. When not material.

Where a defendant pleaded to the information in a liquor prosecution, containing a number of counts, any informality with respect to the alleged failure of the defendant to plead to the offenses charged did not tend to his prejudice, and must therefore under this section, be disregarded on appeal. *State v. Grasswick*, 77 Mont. 326, 250 Pac. 613.

Cited in *State v. Sedlacek*, 74 Mont.

201, 208, 239 Pac. 1002; *State v. Cassill et al.*, 71 Mont. 274, 283, 229 Pac. 716; *State v. Polich*, 70 Mont. 523, 526, 226 Pac. 519; *State v. Knilians*, 69 Mont. 8, 13, 220 Pac. 91; *State v. Murphy*, 68 Mont. 427, 431, 219 Pac. 629.

For text treatment of this subject see vol. 8 Cal. Jur. 599, 604; vol. 14 Cal. Jur. 73.

CHAPTER 18.

ARRAIGNMENT OF THE DEFENDANT.

11875. Defendant must be arraigned in the court where the indictment or information is filed or transferred.

Cited in *State v. Grasswick*, 77 Mont. 326, 328, 250 Pac. 613.

11886. Right to counsel on arraignment.

Where defendant accused of crime did not make a motion to have the minutes of the court corrected to show, as he claimed, that he was arraigned before he was advised of his right to have counsel, contrary to this section, his affidavit contradicting the court minutes in that regard, held insufficient, in the absence of a showing of prejudice, to overcome the presumption that the court performed

its judicial duty seasonably and with due regularity. *State v. Murphy*, 68 Mont. 427, 219 Pac. 629.

Cited as section 9188, Revised Codes, in *State v. Fowler*, 59 Mont. 346, 196 Pac. 992.

For text treatment of this subject see vol. 7 Cal. Jur. 990.

11888. Arraignment, how made.

Cited in *State v. Grasswick*, 77 Mont. 326, 328, 250 Pac. 613; *State v. Murphy*, 68 Mont. 427, 429, 219 Pac. 629.

CHAPTER 19.

SETTING ASIDE THE INDICTMENT OR INFORMATION.

11891. Indictment, when set aside on motion.

Cited in *State v. Sorenson*, 65 Mont. 65, 70, 210 Pac. 752; as section 9193, Revised

Codes, in *State v. Paine*, 61 Mont. 270, 272, 202 Pac. 203.

11892. Defendant waives objections, unless he makes the motion.

By his failure to object to the information charging him with a violation of the Prohibition Act, before demurrer or plea, on the ground that it was filed prior to a preliminary hearing, defendant waived his right to challenge the foundation of the

information. *State v. Sorenson*, 65 Mont. 65, 210 Pac. 752.

For text treatment of this subject see vol. 14 Cal. Jur. 87.

CHAPTER 20.

DEMURRER.

11898. Grounds of demurrer.

The objection that several offenses are improperly united under separate counts in an information cannot be raised by a motion to require the prosecution to elect upon which count it would rely, but must be taken by demurrer. *State v. Marchindo*, 65 Mont. 431, 211 Pac. 1093.

Cited in *In re Lockhart*, 72 Mont. 136,

146, 232 Pac. 183; *State v. Toy*, 65 Mont. 230, 233, 211 Pac. 303; as section 9200, Revised Codes, in *State v. Fowler*, 59 Mont. 346, 196 Pac. 992.

For text treatment of this subject see vol. 14 Cal. Jur. 83.

11901. Judgment on demurrer.

Cited in *State v. Atlas*, 75 Mont. 547, 549, 244 Pac. 477; *State v. Nilan*, 75 Mont. 397, 400, 243 Pac. 1081.

11906. Objections, forming ground of demurrer, when taken.

Cited in *State v. Marchindo*, 65 Mont. 431, 435, 211 Pac. 1093; *State v. Toy*, 65 Mont. 230, 233, 211 Pac. 303; as sec-

tion 9208, Revised Codes, in *State v. Fowler*, 59 Mont. 346, 352, 196 Pac. 992.

CHAPTER 21.

PLEAS.

11907. The different kinds of pleas.

Defendant was charged with liquor violations in four counts; he entered a plea of not guilty "to the offense charged." Two counts were dismissed, and he was found guilty on the remaining two. Held, as against the contention that the conviction cannot be sustained because defendant never pleaded to the charges contained in the two counts on which conviction was had but had pleaded only to one offense, not ascertained, that his plea was to the information as a whole as authorized by this section, and

therefore sufficient. *State v. Grasswick*, 77 Mont. 326, 250 Pac. 613.

A court has no authority to receive a conditional plea from one charged with a criminal offense, to the effect that he pleads guilty provided the punishment imposed be not greater than that designated. *State v. Dow*, 71 Mont. 291, 229 Pac. 402.

For text treatment of this subject see vol. 7 Cal. Jur. 994.

11908. Plea, how put in and its form.

Under this section, any number of offenses against the Prohibition Act may be charged in separate counts in one information. *State v. Grasswick*, 77 Mont. 326, 250 Pac. 613.

Cited in *State ex rel. Hurley v. District*

Court, 76 Mont. 222, 231, 246 Pac. 250; *State v. Dow*, 71 Mont. 291, 299, 229 Pac. 402.

For text treatment of this subject see vol. 7 Cal. Jur. 995.

CHAPTER 22.

CHANGE OF PLACE OF TRIAL.

11916. What petition to contain.

For sufficiency of allegations in affidavits for change of place of trial on the ground of local prejudice, alleged inflammatory newspaper articles, etc., see *State v. Davis*, 60 Mont. 426, 199 Pac. 421; *State v. Bess*, 69 Mont. 558, 199 Pac. 426.

Cited as section 9219, Revised Codes, in *State v. District Court*, 61 Mont. 558, 573, 202 Pac. 756.

For text treatment of this subject see vol. 7 Cal. Jur. 916.

CHAPTER 23.

MODE OF TRIAL—FORMATION OF JURY AND CALENDAR OF ISSUES—POSTPONEMENT OF TRIAL.

11931. When presence of defendant is necessary on the trial.

Under the constitutional and statutory provisions applicable, a defendant charged with crime must be present throughout the entire trial, including the rendition of the verdict, and the fact of his presence must be made to appear from the record. The accused cannot waive his right to be present at the trial. *State v. Reed*, 65 Mont. 51, 210 Pac. 756.

The word "trial" as used in this section means proceedings in open court after the pleadings are finished and it is otherwise ready, down to and including the rendition of the verdict. *State v. Reed*, 65 Mont. 51, 210 Pac. 756.

For text treatment of this subject see vol. 7 Cal. Jur. 928.

11932. Formation of trial jury.

Cited as section 9234, Revised Codes in *State v. Showen*, 60 Mont. 474, 478, 199 Pac. 917.

11935. Defendant entitled to two days to prepare for trial.

Under this section, the defendant is entitled to at least two days to prepare for trial; therefore where he had seven months from the day of entry of his plea to the day of trial for preparation, he had no cause for complaint in this re-

gard. *State v. Showen*, 60 Mont. 474, 199 Pac. 917.

For text treatment of this subject see vol. 8 Cal. Jur. 200.

11936. Notice and affidavits for postponement.

An affidavit filed on the day set for trial, in support of a motion for continuance on the ground of absence of witnesses, which fails to disclose the date on which such witnesses left the state, is insufficient. Such an affidavit must also disclose specifically the facts expected to be proved by the absent witnesses and set forth that if such witnesses were present,

they would testify to those facts. It must also disclose that the facts which the defendant expects to prove by the absent witnesses cannot be proved by other witnesses available at the trial, since a continuance for the purpose of obtaining cumulative evidence need not be granted. *State v. Showen*, 60 Mont. 474, 199 Pac. 917.

11939. Effect of failure to apply.

Cited as section 9241, Revised Codes, in *State v. Showen*, 60 Mont. 474, 477, 199 Pac. 917.

CHAPTER 24.

CHALLENGING THE JURY.

11956. Challenges by state. The state may challenge the same number of jurors allowed the defendant.

Amd. Sec. 1, Ch. 4, L. 1925.

11957. Definition and kinds of challenge, for cause.

Cited in *State v. Russell*, 73 Mont. 240, 243, 235 Pac. 712.

11959. Particular kinds of challenge.

Where one had served as juror in a prosecution for rape, he was not disqualified as for actual bias from serv-

ing in the same capacity in a later case of the same character against another defendant in which the prosecutrix was the

same as in the first, by the fact that on the former trial evidence of the guilt of the latter defendant had been introduced. *State v. Russell*, 73 Mont. 240, 235 Pac. 712.

Cited in *State v. Vettere*, 76 Mont. 574, 584, 248 Pac. 179.

For text treatment of this subject see vol. 15 Cal. Jur. 359, 366, 421.

11960. Ground for challenge for implied bias.

A juror who served on the trial of a rape case is not disqualified as for implied bias from serving as such in a subsequent one against another defendant for a like offense against the same prosecutrix. *State v. Russell*, 73 Mont. 240, 235 Pac. 712.

Cited in *State v. Vettere*, 76 Mont. 574, 584, 248 Pac. 179.

Relationship to prosecutor or witness for prosecution as disqualifying juror in criminal case, note, 18 A. L. R. 375.

Sitting as juror in trial of one person as disqualifying one to serve as juror in trial of another person for offense based on same transaction, note, 19 A. L. R. 1065.

For text treatment of this subject see vol. 15 Cal. Jur. 359 et seq.

11962. Causes of challenge, how stated.

The provision of this section, that in challenging a juror for implied bias one or more of the causes stated in section 11960, and in challenging for actual bias the cause stated in subdivision 2 of section 11959, must be alleged, is mandatory; hence where this is not done, denial of the challenge does not entitle appellant to allege error. *State v. Vettere*, 76 Mont. 574, 248 Pac. 179.

Where a juror on his voir dire stated that from newspaper reports and conversations with others he had formed the opinion that murder had been committed, but had no opinion as to the guilt or innocence of the defendant, that he would require the state to prove beyond a reasonable doubt that the latter had killed deceased with malice aforethought before he would vote for a conviction and that he could fairly and impartially try him, he was not disqualified from serving. *State v. Vettere*, 76 Mont. 574, 248 Pac. 179.

A juror who on his voir dire stated that he had read in the newspapers an account of the homicide for which plain-

tiff was on trial; that he had formed an opinion therefrom which would take evidence to remove, but that in determining the case he would base his verdict upon the evidence and be bound by the court's instructions; that there was nothing known to him why he could not try the case fairly, etc., was competent. *State v. Juhrey*, 61 Mont. 413, 202 Pac. 762.

General challenges of jurors "for the purposes of the record" who while stating on their voir dire that they had read the newspaper account of the killing of the deceased, and were of the opinion at the time that he had been murdered, did not state that they had any belief that defendant had committed the crime, but did say that they would follow the instructions of the court and render an impartial verdict, were properly denied. *State v. Bryne*, 60 Mont. 317, 199 Pac. 262.

Cited in *State v. Russell*, 73 Mont. 240, 244, 235 Pac. 712.

For text treatment of this subject see vol. 15 Cal. Jur. 369, 410.

CHAPTER 25.

THE TRIAL.

11969. Order of trial.

Where defendant, charged with burglary and three prior convictions, at the opening of the trial admitted the prior convictions, the court did not err in permitting knowledge of the prior convictions to go to the jury by allowing the county attorney to read the information charging such convictions, in overruling an objection to the question asked defendant on cross-examination as to the prior convictions, or in instructing the jury that if they found the defendant guilty of burglary they should then consider the matter of the former convic-

tions, giving the provisions of the statute fixing punishment for that crime when aggravated by prior convictions of felonies, in view of the provisions of this section, requiring the county attorney to state the case and offer evidence in support of the prosecution, and the fact that without such knowledge the jury could not intelligently fix the punishment to fit the crime. *State v. O'Neill*, 76 Mont. 526, 248 Pac. 215.

An objection made at the settlement of the instructions in a criminal case that a certain paragraph thereof "is not appli-

cable to the facts of this case" is insufficient, under this section, to warrant review of alleged errors urged under the specification relating thereto. *State v. McClain et al.*, 76 Mont. 351, 246 Pac. 956.

Under this section, the supreme court is prohibited from considering any error in an instruction other than such as is specifically pointed out and excepted to at the settlement of the instructions. *State v. Cassill et al.*, 71 Mont. 274, 229 Pac. 716.

Alleged error in an instruction not specifically pointed out and excepted to at the settlement of the instructions, as required by subdivision 4 of this section, is not entitled to consideration on appeal. *State v. Sawyer*, 71 Mont. 269, 229 Pac. 734.

Error in an instruction not specifically pointed out and excepted to in the trial court cannot be considered on appeal, under subdivision 4 of this section. *State v. Dougherty*, 71 Mont. 265, 229 Pac. 735.

Where a defect in an instruction given was not pointed out specifically by defendant at the settlement of the instructions, the supreme court on appeal may not, under this section, consider an objection not so pointed out. *State v. Bolton*, 65 Mont. 74, 212 Pac. 504.

Under this section errors in giving or refusing instructions cannot be reviewed on appeal unless they, with the proceedings had at the settlement thereof, are incorporated in a bill of exceptions, even though they constitute a part of the judgment-roll or technical record, section 12043 providing otherwise, having been superseded by section 11969. *State v. Carmichael*, 62 Mont. 159, 204 Pac. 362.

Under this section, only those instructions to which objection was made at the time of settlement can be considered on appeal. *State v. Evans*, 60 Mont. 367, 199 Pac. 440.

An erroneous instruction given without objection, became the law of the case, the supreme court on appeal being precluded by this section from reversing a judgment for error in instructions not specifically pointed out and excepted to at the settlement of the instructions. *Hawley v. Richardson*, 60 Mont. 118, 198 Pac. 450.

Cited in *State v. Richardson*, 63 Mont. 322, 329, 207 Pac. 124; as section 9271, Revised Codes, in *State v. Bess*, 60 Mont. 558, 574, 199 Pac. 426; *State v. Chronopoulos*, 60 Mont. 329, 330, 199 Pac. 266.

For text treatment of this subject see vol. 8 Cal. Jur. 231, 260, 306.

11977. Rules of evidence in civil actions applicable to criminal cases.

Cited in *State v. Hopkins*, 68 Mont. 504, 509, 219 Pac. 1106.

11980. When burden of proof shifts in trial for murder.

In a prosecution for murder, where the fact that the defendant killed deceased was established, and there were no circumstances tending to justify or excuse the act, it was not error to instruct, in the language of this section, that, the commission of the homicide being proved, the burden of proving circumstances of mitigation, justification, or excuse devolved on defendant, unless the state's proof showed the crime amounted only to manslaughter, or that defendant was justifiable or excusable. *State v. Bess*, 60 Mont. 558, 199 Pac. 426.

The contention of defendant that since no one was present when the shot which killed deceased was fired, the court erred

in giving an instruction in the words of this section, heretofore construed to mean that if the jury should find the fact that defendant did the killing, the burden of proving circumstances mitigating the offense from murder to manslaughter or justifying it devolves upon him, unless the evidence which proves the killing by the defendant also shows that it was manslaughter or justifiable, held without merit. *State v. Davis*, 60 Mont. 426, 199 Pac. 421.

Cited in *State v. Lewis*, 67 Mont. 447, 453, 216 Pac. 337.

For text treatment of this subject see vol. 13, Cal. Jur. 734-737.

11987. Evidence of false pretenses.

For discussion of sufficiency of information and evidence necessary to support charge of obtaining money by false pretense, see *State v. Brantingham*, 66 Mont. 1, 212 Pac. 499.

Under this section, where defendant was charged with obtaining money by a false pretense that he had credit at a certain bank and could borrow the money

there, testified to by one witness only, there was a total failure of proof, in the absence of any false token or writing employed by the defendant or corroborating circumstances. *State v. Brantingham*, 66 Mont. 1, 212 Pac. 499.

For text treatment of this subject see vol. 12 Cal. Jur. 474.

11988. Conviction on testimony of accomplice.

The corroborating evidence without which a defendant cannot be convicted on the testimony of an accomplice, under this section, may be supplied by the defendant or his witnesses; may be circumstantial; need not extend to every fact to which the accomplice testifies; need not be sufficient to justify a conviction or to establish a *prima facie* case of guilt, or to connect the defendant with the commission of the crime, it being sufficient if it tends to do so, and whether it tends to do so is a question of law, the weight of the evidence—its efficacy to fortify the testimony of the accomplice and render his story trustworthy—being a matter for the consideration of the jury. *State v. Cobb*, 76 Mont. 89, 245 Pac. 265.

Evidence in a prosecution for the larceny of horses, corroborative of the testimony of two accomplices, examined and held sufficient as tending to connect defendant with the commission of the offense, and therefore sufficient to sustain his conviction under this section. *State v. Cobb*, 76 Mont. 89, 245 Pac. 265.

An accomplice need not be corroborated as to every material fact to which he testifies, nor is it necessary that the corroborative testimony be sufficient to make out a *prima facie* case against the defendant. *State v. Ritz*, 65 Mont. 180, 211 Pac. 298.

Evidence corroborative of that given by an accomplice need not be direct, but may be circumstantial, the statute being satisfied if the independent evidence tends to connect the accused with the commis-

sion of the crime of which he is charged. *State v. Ritz*, 65 Mont. 180, 211 Pac. 298.

Evidence corroborative of that of an accomplice need not be direct, but if the circumstances tend to connect defendant with the commission of the crime, it is sufficient to sustain conviction. *State v. Bolton*, 65 Mont. 74, 212 Pac. 504.

An accomplice need not be corroborated upon every fact to which he testified, nor is it necessary that the independent evidence alone should be sufficient to warrant a conviction, it being sufficient if, unaided by that of the accomplice, it tends to connect with the perpetration of the crime. *State v. Bolton*, 65 Mont. 74, 212 Pac. 504.

One accomplice cannot supply the independent evidence necessary to corroborate another accomplice. *State v. Bolton*, 65 Mont. 74, 212 Pac. 504.

Cited in *State v. Smith*, 75 Mont. 22, 27, 241 Pac. 522.

Duty of court as to direction of verdict of acquittal in absence of any testimony corroborating testimony of accomplice, note, 17 A. L. R. 921.

Thief as accomplice of one charged with receiving stolen property or vice versa, within rule requiring corroboration, notes, 9 A. L. R. 1397; 32 A. L. R. 449.

For text treatment of this subject, see vol. 1 Cal. Jur. 113, 114; vol. 4 Cal. Jur. 510, 511; vol. 5 Cal. Jur. 515; vol. 8 Cal. Jur. 172-181; vol. 15 Cal. Jur. 949; vol. 22 Cal. Jur. 562, 874.

11995. When evidence on either side is closed, court may advise jury to acquit.

Cited in *State v. Moe*, 68 Mont. 552, 219 Pac. 830.

CHAPTER 27.**THE VERDICT.****12017. Return of jury.**

This and sections 12018 and 12019 were cited in *State v. Reed*, 65 Mont. 51, 55, 210 Pac. 756.

12019. Manner of taking verdict.

Where on the poll of the jury one juror answered that the verdict of guilty of burglary was his verdict provided the sentence was suspended, but thereafter, upon inquiry by the court, unqualifiedly answered that it was his verdict, a motion for dismissal of the information on the

ground that the verdict had not been rendered by a full panel was properly denied. *State v. Asher*, 63 Mont. 302, 206 Pac. 1091.

For text treatment of this subject see vol. 8 Cal. Jur. 410.

12020. General verdict.

Cited in *State v. Polich*, 70 Mont. 523, 528, 226 Pac. 519.

12023. Jury may find upon charge of previous conviction.

Cited in *State v. O'Neill*, 76 Mont. 526, 528, 534, 248 Pac. 215.

12026. To ascertain value of property.

In view of this section, providing that in a prosecution for an offense against the property of another, the jury must ascertain and declare in their verdict not only the value of the property taken but also the amount restored, refusal to permit

defendant to introduce evidence to show the amount restored to the person from whom he obtained money by false pretenses was prejudicial error. *State v. Mason*, 62 Mont. 180, 204 Pac. 358.

12027. Jury may assess punishment.

One on trial for crime has the right to have the jury assess the punishment upon a correct statement of the law as to the penalty prescribed for the offense, and therefore, in view of this section, providing that when there is any alternative or discretion in regard to the kind or extent of the punishment to be inflicted, the jury may assess the punishment in their verdict, an instruction that the penalty for unlawfully possessing and

transporting intoxicating liquor was a fine of not more than \$500, or imprisonment for not more than six months, or both such fine and imprisonment, whereas under section 11075, for the first offense a fine of not more than \$500 could be imposed, was prejudicially erroneous. *State v. Miller*, 69 Mont. 1, 220 Pac. 97.

Cited in *State v. O'Neill*, 76 Mont. 526, 533, 248 Pac. 215; *State v. Mark*, 69 Mont. 18, 27, 220 Pac. 94.

12028. Court may assess punishment.

Where at the time of the verdict fixing the punishment of defendant for violation of the liquor law "at thirty days" he made no objection to it on the ground that the place of imprisonment was not fixed, and the court was not requested to require the jury to retire and supply the

omission, he is in no position to complain of the defect on appeal. *State v. Marchindo*, 65 Mont. 431, 211 Pac. 1093.

Cited in *State v. Miller*, 69 Mont. 1, 220 Pac. 97; as section 9330, Revised Codes, in *State v. Fowler*, 59 Mont. 346, 196 Pac. 992.

12031. Court may reduce verdict.

The power given the district court by this section, to reduce the extent of punishment fixed by the jury in a criminal prosecution, must be exercised prior to or at the time judgment is pronounced, and that therefore an order reducing a fine and jail sentence after the judgment had been in process of execution for a number of days was void as in excess of

jurisdiction, and an encroachment upon the pardoning power reposed by the constitution in the governor and the state pardoning board. *State ex rel. Reid v. District Court*, 68 Mont. 309, 218 Pac. 558.

Cited in *State ex rel. Bottomly v. District Court*, 73 Mont. 541, 545, 237 Pac. 525.

12032. Polling jury.

Cited in *State v. Asher*, 63 Mont. 302, 306, 206 Pac. 1091.

CHAPTER 28.**BILLS OF EXCEPTION.****12037. In what cases.**

Cited in *State v. Brantingham*, 66 Mont. 1, 7, 212 Pac. 499.

This and the five following sections

were cited as sections 9339-9345, Revised Codes, in *State v. Carmichael*, 62 Mont. 159, 160, 204 Pac. 362.

12043. Written charges, etc., need not be excepted to.

This section was superseded by section 11969. *State v. Carmichael*, 62 Mont. 159, 204 Pac. 362.

12044. Settlement of bills of exceptions.

Cited in *State v. Kacar*, 74 Mont. 269, 273, 240 Pac. 365.

12045. Record on appeal in criminal cases.

On appeal by the state in a criminal cause from an order granting defendant a new trial, the affidavits used on the motion must, under this section, be incorporated in a bill of exceptions; if not so presented, the supreme court is without jurisdiction to review the order.

State v. Carmichael, 62 Mont. 159, 204 Pac. 362.

Cited in *State v. Kepler et al.*, 77 Mont. 307, 314, 250 Pac. 603; *State v. Nilan*, 75 Mont. 397, 400, 243 Pac. 1081; *State v. Brantingham*, 66 Mont. 1, 7, 212 Pac. 499.

CHAPTER 29.**NEW TRIALS.****12048. In what cases it may be granted.**

For discussion of the proposition that under certain circumstances the supreme court is in a more advantageous position than the trial court to determine sufficiency of evidence on motion for new trial, as where defendant is charged with a heinous crime, such as might overcome the calm judgment of the court and jury, see *State v. Wilson*, 76 Mont. 384, 247 Pac. 158.

For discussion as to what constitutes cumulative evidence on an application for new trial on the ground of newly discovered evidence, see *State v. Gangner*, 73 Mont. 187, 235 Pac. 703.

An affidavit in support of a motion for a new trial on the ground of newly discovered evidence which shows that such evidence would do no more than to impeach the credit of a witness for the state, and does not show that the defendant would be able to produce the evidence on a retrial of the action, is insufficient. *State v. Dougherty*, 71 Mont. 265, 229 Pac. 735.

Rulings upon the admission or rejection of testimony and upon giving or refusing instructions may be reviewed either upon appeal from the judgment or on appeal from an order refusing a new trial, but any other questions arising under this section may be reviewed only upon appeal from an order denying a new trial. *State v. Brantingham*, 66 Mont. 1, 212 Pac. 499.

An application for a new trial on the ground that the verdict is contrary to the evidence or on the ground of the insufficiency of the evidence to sustain the verdict is addressed to the sound discretion of the trial court. *State v. Brantingham*, 66 Mont. 1, 212 Pac. 499.

An affidavit in support of a motion for a new trial following a conviction for attempted rape that the prosecuting witness, some five months before the trial, said to affiant that, if defendant didn't "fork over," she "would send him over the road for the rest of his life," was not "newly discovered evidence" within the meaning of this section, that expression meaning evidence discovered since the trial. *State v. Prouty*, 60 Mont. 310, 199 Pac. 281.

Cited in *State v. Gies*, 77 Mont. 62, 64, 249 Pac. 573; *State v. Hughes et al.*, 76 Mont. 421, 424, 246 Pac. 959; *Brunnabend v. Tibbles*, 76 Mont. 288, 296 Pac. 536.

Incompetency, illness, negligence or the like of counsel as ground for new trial in criminal case, note, 24 A. L. R. 1025.

Absence of evidence supporting charge of lesser degree of homicide as affecting duty of court to instruct as to lesser degree, notes, 21 A. L. R. 603; 27 A. L. R. 1097.

Communications between jurors and others as ground for new trial in criminal case, notes, 22 A. L. R. 254; 34 A. L. R. 103.

Receipt of document or statement in jury-room constituting new evidence as ground for new trial in criminal case, note, 20 A. L. R. 1187.

New trial because of separation of jury, note, 34 A. L. R. 1115.

Statements by witness after criminal trial tending to show that his testimony was perjured, as ground for new trial, note, 33 A. L. R. 550.

For text treatment of this subject see vol. 8 Cal. Jur. 415 et seq.

12050. Motions for new trial, how made—Hearing.

Cited in *State ex rel. Bottomly v. District Court*, 73 Mont. 541, 548, 237 Pac. 525.

CHAPTER 30.

ARREST OF JUDGMENT.

12051. Motion in arrest of judgment.

Cited as section 9353, Revised Codes, in *State v. Schaffer*, 59 Mont. 463, 467, 197 Pac. 986.

CHAPTER 31.

THE JUDGMENT—INDETERMINATE SENTENCE—SUSPENSION OF SENTENCE AND PROBATION.

12055. Appointing time for judgment.

Cited in *State v. Sorenson*, 75 Mont. 30, 34, 241 Pac. 616.

12064. Arraignment of defendant for judgment.

Cited in *State v. Sorenson*, 75 Mont. 30, 35, 241 Pac. 616.

12066. If no cause shown, judgment to be pronounced.

Cited in *State v. Sorenson*, 75 Mont. 30, 35, 241 Pac. 616.

12069. Duration of imprisonment on judgment to pay a fine.

Cited in *In re Pyle*, 72 Mont. 494, 498, 234 Pac. 254.

12074. Entry of judgment and judgment-roll.

Cited in *State v. Kepler et al.*, 77 Mont. 307, 314, 250 Pac. 603; *State v. Atlas*, 75 Mont. 547, 549, 244 Pac. 477; *State v. Nilan*, 75 Mont. 397, 400, 243 Pac. 1081; *State v. Sorenson*, 75 Mont. 30, 35, 241 Pac. 616.

12075. Indeterminate sentence.

Cited in *State v. O'Neill*, 76 Mont. 526, 534, 248 Pac. 215. *State v. Yegen*, 74 Mont. 126, 140, 238 Pac. 603.

Sections 12075-12077 were cited in

12078. Court may suspend sentence, when.

Under the act providing for suspension of sentences in criminal cases, the order of suspension must be made before the defendant is committed to the institution wherein he is to serve his sentence. *State ex rel. Bottomly v. District Court*, 73 Mont. 541, 237 Pac. 525.

The suspended sentence law does not infringe the pardoning power confided by section 9, article VII, of the constitution, to the governor with the approval of the board of pardons. *State ex rel. Bottomly v. District Court*, 73 Mont. 541, 237 Pac. 525.

The statute providing for the suspension of sentences in criminal actions is designed to afford first offenders an opportunity for reformation and should be liberally construed. *State ex rel. Bottomly v. District Court*, 73 Mont. 541, 237 Pac. 525.

Defendant was convicted of a violation of the liquor law and sentenced to serve

sixty days in jail and pay a fine. He at once perfected an appeal, secured a certificate of probable cause and was admitted to bail. Five months thereafter his appeal was dismissed and the trial court on the day the certificate of dismissal was received suspended his sentence. Held, on application for writ of supervisory control, that defendant never having been committed, the court could properly, after entry of judgment, suspend the sentence at the time it did. *State ex rel. Bottomly v. District Court*, 73 Mont. 541, 237 Pac. 525.

Under this section, the district court has authority to suspend sentence and place the defendant on probation whether found guilty of a crime or a misdemeanor. *State ex rel. Foot v. District Court et al.*, 72 Mont. 374, 233 Pac. 957.

An order suspending a sentence for a misdemeanor and placing defendant upon probation must be made at the time the

12044. Settlement of bills of exceptions.

Cited in *State v. Kacar*, 74 Mont. 269, 273, 240 Pac. 365.

12045. Record on appeal in criminal cases.

On appeal by the state in a criminal cause from an order granting defendant a new trial, the affidavits used on the motion must, under this section, be incorporated in a bill of exceptions; if not so presented, the supreme court is without jurisdiction to review the order.

State v. Carmichael, 62 Mont. 159, 204 Pac. 362.

Cited in *State v. Kepler et al.*, 77 Mont. 307, 314, 250 Pac. 603; *State v. Nilan*, 75 Mont. 397, 400, 243 Pac. 1081; *State v. Brantingham*, 66 Mont. 1, 7, 212 Pac. 499.

CHAPTER 29.**NEW TRIALS.****12048. In what cases it may be granted.**

For discussion of the proposition that under certain circumstances the supreme court is in a more advantageous position than the trial court to determine sufficiency of evidence on motion for new trial, as where defendant is charged with a heinous crime, such as might overcome the calm judgment of the court and jury, see *State v. Wilson*, 76 Mont. 384, 247 Pac. 158.

For discussion as to what constitutes cumulative evidence on an application for new trial on the ground of newly discovered evidence, see *State v. Gangner*, 73 Mont. 187, 235 Pac. 703.

An affidavit in support of a motion for a new trial on the ground of newly discovered evidence which shows that such evidence would do no more than to impeach the credit of a witness for the state, and does not show that the defendant would be able to produce the evidence on a retrial of the action, is insufficient. *State v. Dougherty*, 71 Mont. 265, 229 Pac. 735.

Rulings upon the admission or rejection of testimony and upon giving or refusing instructions may be reviewed either upon appeal from the judgment or on appeal from an order refusing a new trial, but any other questions arising under this section may be reviewed only upon appeal from an order denying a new trial. *State v. Brantingham*, 66 Mont. 1, 212 Pac. 499.

An application for a new trial on the ground that the verdict is contrary to the evidence or on the ground of the insufficiency of the evidence to sustain the verdict is addressed to the sound discretion of the trial court. *State v. Brantingham*, 66 Mont. 1, 212 Pac. 499.

An affidavit in support of a motion for a new trial following a conviction for attempted rape that the prosecuting witness, some five months before the trial, said to affiant that, if defendant didn't "fork over," she "would send him over the road for the rest of his life," was not "newly discovered evidence" within the meaning of this section, that expression meaning evidence discovered since the trial. *State v. Prouty*, 60 Mont. 310, 199 Pac. 281.

Cited in *State v. Gies*, 77 Mont. 62, 64, 249 Pac. 573; *State v. Hughes et al.*, 76 Mont. 421, 424, 246 Pac. 959; *Brunnabend v. Tibbles*, 76 Mont. 288, 296 Pac. 536.

Incompetency, illness, negligence or the like of counsel as ground for new trial in criminal case, note, 24 A. L. R. 1025.

Absence of evidence supporting charge of lesser degree of homicide as affecting duty of court to instruct as to lesser degree, notes, 21 A. L. R. 603; 27 A. L. R. 1097.

Communications between jurors and others as ground for new trial in criminal case, notes, 22 A. L. R. 254; 34 A. L. R. 103.

Receipt of document or statement in jury-room constituting new evidence as ground for new trial in criminal case, note, 20 A. L. R. 1187.

New trial because of separation of jury, note, 34 A. L. R. 1115.

Statements by witness after criminal trial tending to show that his testimony was perjured, as ground for new trial, note, 33 A. L. R. 550.

For text treatment of this subject see vol. 8 Cal. Jur. 415 et seq.

12050. Motions for new trial, how made—Hearing.

Cited in *State ex rel. Bottomly v. District Court*, 73 Mont. 541, 548, 237 Pac. 525.

CHAPTER 30.

ARREST OF JUDGMENT.

12051. Motion in arrest of judgment.

Cited as section 9353, Revised Codes, in *State v. Schaffer*, 59 Mont. 463, 467, 197 Pac. 986.

CHAPTER 31.

THE JUDGMENT—INDETERMINATE SENTENCE—SUSPENSION OF SENTENCE AND PROBATION.

12055. Appointing time for judgment.

Cited in *State v. Sorenson*, 75 Mont. 30, 34, 241 Pac. 616.

12064. Arraignment of defendant for judgment.

Cited in *State v. Sorenson*, 75 Mont. 30, 35, 241 Pac. 616.

12066. If no cause shown, judgment to be pronounced.

Cited in *State v. Sorenson*, 75 Mont. 30, 35, 241 Pac. 616.

12069. Duration of imprisonment on judgment to pay a fine.

Cited in *In re Pyle*, 72 Mont. 494, 498, 234 Pac. 254.

12074. Entry of judgment and judgment-roll.

Cited in *State v. Kepler et al.*, 77 Mont. 307, 314, 250 Pac. 603; *State v. Atlas*, 75 Mont. 547, 549, 244 Pac. 477;

State v. Nilan, 75 Mont. 397, 400, 243 Pac. 1081; *State v. Sorenson*, 75 Mont. 30, 35, 241 Pac. 616.

12075. Indeterminate sentence.

Cited in *State v. O'Neill*, 76 Mont. 526, 534, 248 Pac. 215.

State v. Yegen, 74 Mont. 126, 140, 238 Pac. 603.

Sections 12075-12077 were cited in

12078. Court may suspend sentence, when.

Under the act providing for suspension of sentences in criminal cases, the order of suspension must be made before the defendant is committed to the institution wherein he is to serve his sentence. *State ex rel. Bottomly v. District Court*, 73 Mont. 541, 237 Pac. 525.

The suspended sentence law does not infringe the pardoning power confided by section 9, article VII, of the constitution, to the governor with the approval of the board of pardons. *State ex rel. Bottomly v. District Court*, 73 Mont. 541, 237 Pac. 525.

The statute providing for the suspension of sentences in criminal actions is designed to afford first offenders an opportunity for reformation and should be liberally construed. *State ex rel. Bottomly v. District Court*, 73 Mont. 541, 237 Pac. 525.

Defendant was convicted of a violation of the liquor law and sentenced to serve

sixty days in jail and pay a fine. He at once perfected an appeal, secured a certificate of probable cause and was admitted to bail. Five months thereafter his appeal was dismissed and the trial court on the day the certificate of dismissal was received suspended his sentence. Held, on application for writ of supervisory control, that defendant never having been committed, the court could properly, after entry of judgment, suspend the sentence at the time it did. *State ex rel. Bottomly v. District Court*, 73 Mont. 541, 237 Pac. 525.

Under this section, the district court has authority to suspend sentence and place the defendant on probation whether found guilty of a crime or a misdemeanor. *State ex rel. Foot v. District Court et al.*, 72 Mont. 374, 233 Pac. 957.

An order suspending a sentence for a misdemeanor and placing defendant upon probation must be made at the time the

sentence is pronounced and becomes part of the judgment itself. *State ex rel. Reid v. District Court*, 68 Mont. 309, 218 Pac. 558.

12080. Effect of suspended sentence.

The effect of an order of the district court suspending the sentence of one convicted of a misdemeanor is to place him under the control and management of the state board of prison commissioners and subject to such rules and

regulations as it may see fit to make. *State ex rel. Foot v. District Court et al.*, 72 Mont. 374, 233 Pac. 957.

Cited in *State ex rel. Bottomly v. District Court*, 73 Mont. 541, 237 Pac. 525.

12082. Certificate of judgment, and order for suspension.

Cited in *State ex rel. Bottomly v. District Court*, 73 Mont. 541, 237 Pac. 525.

12083. Rules and regulations.

Cited in *State ex rel. Foot v. District Court et al.*, 72 Mont. 374, 379, 233 Pac. 957.

12084. Termination of probation—Arrest of prisoner.

Cited in *State ex rel. Foot v. District Court et al.*, 72 Mont. 374, 379, 233 Pac. 957.

12085. Final discharge.

Under this section, the length of the period of probation of a convicted defendant cannot be more than the maximum term for which he might have been imprisoned. Defendant was convicted of a violation of the liquor laws and sentenced to the county jail for ninety days, the sentence being suspended. A year thereafter the court revoked the suspension and ordered him committed to jail. Held, on application for writ of super-

visory control, that by its order suspending the sentence, jurisdiction over the person of defendant became vested in the state board of prison commissioners, that the court, therefore, was without authority to order him committed, and, the term of his imprisonment having expired, that the board could not do so. *State ex rel. Foot v. District Court et al.*, 72 Mont. 374, 233 Pac. 957.

CHAPTER 32.

THE EXECUTION.

12087. Execution of a judgment other than of death.

Cited in *State v. Sorenson*, 75 Mont. 30, 36, 241 Pac. 616.

12094. Judgment of death, when suspended.

Cited in *State v. Vettere*, 77 Mont. 66, 71, 249 Pac. 666.

12095. Insanity of defendant, how determined.

Where, after judgment of death has been pronounced upon a defendant, there is good reason to suppose that he has become insane, the sheriff, with the concurrence of the judge of the court by which the judgment was rendered, may summon a jury to inquire into the question of his sanity, in conformity with sections 12095 et seq.; but where during

the course of the trial or before judgment of conviction is pronounced a doubt arises as to his mental condition, the procedure outlined by sections 12214 to 12219 is controlling. *State v. Vettere*, 77 Mont. 66, 249 Pac. 666.

For text treatment of this subject see vol. 8 Cal. Jur. 198, 485.

12096. Duty of county attorney upon inquisition.

Sections 12096, 12097 were cited in *State v. Vettere*, 77 Mont. 66, 71, 249 Pac. 666.

12098. Proceedings upon finding of jury.

Sections 12098, 12099 were cited in *State ex rel. Bottomly v. District Court*, 73 Mont. 541, 548, 237 Pac. 525.

CHAPTER 33.**APPEALS—WHEN ALLOWED—HOW TAKEN—THE EFFECT THEREOF.****12107. Appeal, when may be taken by the defendant.**

An order denying a new trial in a criminal case is not reviewable on appeal from the judgment. *State v. English*, 71 Mont. 343, 229 Pac. 727.

On appeal from a judgment of conviction only, an assignment of error for denial of defendant's motion for a new trial cannot be considered. *State v. Ritz*, 65 Mont. 180, 211 Pac. 298.

Under this section defendant may ap-

peal from an order made after final judgment in a criminal case. *State v. Fowler*, 59 Mont. 346, 196 Pac. 992.

Cited in *State v. Gangner*, 73 Mont. 187, 190, 235 Pac. 703; *State v. Brantingham*, 66 Mont. 1, 7, 212 Pac. 499.

For text treatment of this subject see vol. 8 Cal. Jur. 492 et seq., 518.

12108. In what cases by the state.

The record on appeal in a criminal case must, among other things, contain the judgment-roll in which must be included a copy of the judgment. The state, on the theory that an objection of defendant to the introduction of evidence on the ground of the insufficiency of the information is in effect a demurrer to the information and an order sustaining a demurrer constitutes the judgment, attempted to appeal from such an order as

from the judgment, but the record did not contain a copy of the order in the form of a minute entry, which in such a case constitutes the judgment. Held, that the supreme court was without jurisdiction to entertain the appeal. *State v. Nilan et al.*, 75 Mont. 397, 243 Pac. 1081.

For text treatment of this subject see vol. 8 Cal. Jur. 496.

12110. Appeal, how taken.

Cited in *State v. Nilan*, 75 Mont. 397, 400, 243 Pac. 1081.

Cited in *State v. Atlas*, 75 Mont. 547, 549, 244 Pac. 477.

12113. Effect of appeal by the defendant.

Cited in *State v. Dahlgren*, 74 Mont. 217, 235, 239 Pac. 775; *State ex rel. Bottomly v. District Court*, 73 Mont. 541,

544, 237 Pac. 525; as section 9403, Revised Codes, in *State v. Fowler*, 59 Mont. 346, 196 Pac. 992.

CHAPTER 34.**DISMISSING APPEALS FOR IRREGULARITY—ARGUMENT ON THE APPEAL—JUDGMENT UPON APPEAL.****12119. For what irregularity, and how dismissed.**

Cited in *State ex rel. Bottomly v. District Court*, 73 Mont. 541, 544, 237 Pac. 525.

12122. Judgment cannot be reversed without argument.

Where appellant in a criminal case fails to file his brief, and on the day set for the argument no appearance on behalf of either side is made, the judgment appealed from will be affirmed. *State v. Cassill*, 72 Mont. 381, 233 Pac. 908.

Cited in *State v. Kepler et al.*, 77 Mont. 307, 315, 250 Pac. 603.

For text treatment of this subject see vol. 8 Cal. Jur. 542.

12125. Judgment without regard to technical errors.

The presence of defendant at his trial for crime is a matter which affects the substantial rights of both plaintiff and defendant and therefore the provisions of this section, requiring the supreme court to give judgment on appeal without regard to technical errors or defects not affecting the substantial rights of the parties, has no application. *State v. Reed*, 65 Mont. 51, 210 Pac. 756.

Under this section, the supreme court on appeal in a criminal cause must give judgment without regard to technical errors or defects or to exceptions which do not affect the substantial rights of the defendant. *State v. McConville*, 64 Mont. 302, 209 Pac. 987.

Cited in *State v. McClain et al.*, 76 Mont. 351, 358, 246 Pac. 956; *State v. Wong Fong*, 75 Mont. 81, 88, 241 Pac. 1072; *State v. Sedlacek*, 74 Mont. 201, 216, 239 Pac. 1002; *State v. Russell*, 73 Mont. 240, 251, 235 Pac. 712; *State v. Cassill et al.*, 71 Mont. 274, 283, 229 Pac. 716; *State v. Murphy*, 68 Mont. 427, 431, 219 Pac. 629; *Lindeberg v. Howe*, 67 Mont. 195, 199, 215 Pac. 230; as section 9415, Revised Codes, in *State v. Prouty*, 60 Mont. 310, 199 Pac. 281.

For text treatment of this subject see vol. 8 Cal. Jur. 599.

12126. What may be reviewed on an appeal by the defendants.

On appeal from the judgment of conviction only, a specification of error based upon the order denying their motion for new trial on the ground of misconduct of one of the jurors, cannot be considered. *State v. Maggert et al.*, 64 Mont. 331, 209 Pac. 989.

Under this section, the supreme court, on appeal from the judgment, may not review the sufficiency of the evidence to warrant conviction, in the absence of

any intermediate order or ruling involving the merits or which may have affected the judgment. *State v. Asher*, 63 Mont. 302, 206 Pac. 1091.

Cited in *State v. Brantingham*, 66 Mont. 1, 7, 212 Pac. 499; *State v. Ritz*, 65 Mont. 180, 189, 211 Pac. 298.

For text treatment of this subject see vol. 8 Cal. Jur. 511, 515, 518, 560.

12132. Jurisdiction ceases after judgment remitted.

Sections 12132, 12133 were cited in *State ex rel. Bottomly v. District Court*, 73 Mont. 541, 544, 237 Pac. 525.

CHAPTER 35.**IN WHAT CASES DEFENDANT MAY BE ADMITTED TO BAIL.****12133. Admission to bail defined.**

Sections 12133, 12134 were cited in *Kirschbaum v. Mayn*, 76 Mont. 320, 328, 48 A. L. B. 1425, 246 Pac. 953; *State*

ex rel. Bottomly v. District Court, 73 Mont. 541, 544, 237 Pac. 525.

CHAPTER 36.**BAIL ON BEING HELD TO ANSWER BEFORE INFORMATION.****12141. Bail, how put in, and form of the undertaking.**

This and section 12142 were cited in *County of Wheatland v. Van et al.*, 64 Mont. 113, 116, 207 Pac. 1003; as section

9448, Revised Codes, in *Hassan v. Earll*, 61 Mont. 389, 393, 202 Pac. 581.

CHAPTER 37.**BAIL ON INDICTMENT OR INFORMATION BEFORE CONVICTION.****12149. Form of undertaking.**

Cited as section 9456, Revised Codes, in *Hassan v. Earll*, 61 Mont. 389, 393, 202 Pac. 581.

CHAPTER 38.

BAIL ON APPEAL—DEPOSIT INSTEAD OF BAIL.

12154. Deposit, when and how made.

Where a prisoner for whom bail was furnished by plaintiff by a deposit of Liberty bonds was in court in the custody of the sheriff and released at once, the fact that a certificate of the deposit was not delivered to the officer as required by this section, as authority for releasing him, was immaterial. *Kirschbaum v. Mayn*, 76 Mont. 320, 48 A. L. R. 1425, 246 Pac. 953.

Where plaintiff in an action in claim and delivery against a clerk of the district court to recover possession of Liberty bonds deposited as bail for one

accused of crime and subsequently declared forfeited, brought on the theory that the deposit was unauthorized under this section, under which the clerk could accept only money, had stipulated at the time bail was furnished that the bonds were substantially the equivalent of the amount fixed as bail in money or cash, she was estopped to assert otherwise. *Kirschbaum v. Mayn*, 76 Mont. 320, 48 A. L. R. 1425, 246 Pac. 953.

For text treatment of this subject see vol. 3 Cal. Jur. 1052.

12156. Deposit to be applied to payment of judgment and fine.

Cited as section 9463, Revised Codes, in *State v. Fowler*, 59 Mont. 346, 196 Pac. 992.

CHAPTER 39.

SURRENDER OF DEFENDANT—FORFEITURE OF BAIL—RECOMMITMENT OF THE DEFENDANT.

12173. Form of the undertaking.

In an action on a bail bond in the form prescribed by this section, running to the state, the state and not the county is the proper party plaintiff, though, under section 12433, the money recovered goes to the county and not to the state.

County of Wheatland v. Van et al, 64 Mont. 113, 207 Pac. 1003.

Cited in *Hassan v. Earl*, 61 Mont. 389, 393, 202 Pac. 581.

For text treatment of this subject see vol. 3 Cal. Jur. 1057, 1060, 1062.

CHAPTER 40.

WHO MAY BE WITNESS IN CRIMINAL ACTIONS.

12177. When the defendant is not a competent witness, and when he may testify.

Where defendant did not testify in his own behalf, an instruction in the words of this section that if defendant does testify, the jury, in judging of the credibility and weight of his testimony, may take into consideration the fact that he is the defendant and the nature and enormity of the crime, though unnecessary, was harmless. *State v. Stevens*, 60 Mont. 390, 199 Pac. 256.

Cited in *State v. Kessler*, 74 Mont. 166, 167, 239 Pac. 1000.

Privilege against self-incrimination before grand jury, note, 27 A. L. R. 139.

For text treatment of this subject see vol. 8 Cal. Jur. 268, 358; vol. 27 Cal. Jur. 23, 93.

CHAPTER 44.

PROCEEDINGS ON INQUIRY AS TO THE SANITY OF A DEFENDANT.

12213. Insane person cannot be tried or punished.

Cited in *State v. Vettere*, 77 Mont. 66, 72, 249 Pac. 666.

12214. Doubts as to sanity of the defendant, how determined—Stay of proceedings on.

On appeal from an order of the trial court declining to summon a special jury to inquire into the sanity of one under sentence of death, defendant's counsel whose application for the order was based upon the provisions of this section, on the theory that section 12095 and following sections applicable to the situation were invalid, was not in a position to attack the validity of the latter sections, under the rule that one whose interests have not been or are not about to be prejudicially affected by an alleged invalid statute cannot question its constitutionality. *State v. Vettere*, 77 Mont. 66, 249 Pac. 666.

An application to have the sanity of a defendant convicted of murder determined under this section, is addressed to judicial discretion, the doubt mentioned

in this section as to his sanity which must exist, being one arising in the mind of the trial judge, not necessarily presented by the assertion of defendant's counsel that his client is insane, and unless the record shows error on his part, its action will be affirmed. *State v. Vettere*, 77 Mont. 66, 249 Pac. 666.

Where during the course of the trial of one charged with crime, or before judgment of conviction is pronounced, a doubt arises as to the mental condition of the accused, the procedure outlined by sections 12214-12219 is controlling. *State v. Vettere*, 77 Mont. 66, 249 Pac. 666.

For text treatment of this subject see vol. 8 Cal. Jur. 195-199.

CHAPTER 45.

COMPROMISING OFFENSES BY LEAVE OF COURT.

12220. Compromise of offense for which civil action may be had.

Where one charged with an offense which, under this section, may lawfully be compromised, voluntarily pays the amount involved in the criminal case for the purpose of settlement and the charge is withdrawn or dismissed, the payment is a tacit admission that there was probable cause for instituting the

criminal proceeding, and an action for malicious prosecution thereafter does not lie. *Saner v. Bowker*, 69 Mont. 463, 222 Pac. 1056.

For text treatment of this subject see vol. 7 Cal. Jur. 882.

CHAPTER 46.

DISMISSAL OF ACTIONS FOR WANT OF PROSECUTION OR OTHER REASONS.

12223. When action may be dismissed.

A defendant is not entitled to a dismissal of the charge against him on the ground that he was not brought to trial within six months after the information was filed if the delay was caused by a mistrial. *State v. Turlock*, 76 Mont. 549, 248 Pac. 169.

The postponement of a trial with the consent of the defendant constitutes a waiver of the right of the defendant to a speedy trial. *State v. Turlock*, 76 Mont. 549, 248 Pac. 169.

That the trial judge deemed it unwise,

inexpedient and unnecessary to call a jury during the term at which a defendant should have been tried in order to come within the limitation of six months prescribed by this section, for bringing him to trial, held not the "good cause" contemplated by the section, upon a showing of which a motion to dismiss the information may properly be denied. *State v. Arkle*, 76 Mont. 81, 245 Pac. 526.

One charged with crime is, under this section, entitled to a dismissal of the in-

formation, whether he be imprisoned in the county jail or at liberty upon bail, if not brought to trial within six months after its filing, unless the state can show good cause why dismissal should not follow. *State v. Arkle*, 76 Mont. 81, 245 Pac. 526.

It is only by making timely objection before actively participating in the trial of a criminal prosecution against him that defendant can avail himself of the right to have the prosecution dismissed, under

this section, because not brought to trial within six months after filing of the information; hence where motion to dismiss on that ground was not made until the trial had commenced and the jury had been sworn, he will be held to have waived the right. *State v. Test*, 65 Mont. 134, 211 Pac. 217.

For text treatment of this subject see vol. 8 Cal. Jur. 201 et seq.

12226. If action dismissed, defendant to be discharged, etc.

Cited as section 9533, Revised Codes, in *Hassan v. Earll*, 61 Mont. 389, 394, 202 Pac. 581.

12229. Dismissal a bar in misdemeanor, but not in a felony.

Dismissal of an information before defendant is called upon to plead or before the jury is impaneled and sworn does not bar a subsequent prosecution for the

same offense. *State v. Knilians*, 69 Mont. 8, 220 Pac. 91.

For text treatment of this subject see vol. 7 Cal. Jur. 944.

CHAPTER 49.

PARDONS—COMMUTATIONS—REMISSIONS—RESPITES—BOARD OF PARDONS.

12247. Power of governor to grant pardons—Board of pardons, how composed.

Cited in *Anderson et al. v. Wirkman*, 67 Mont. 176, 186, 215 Pac. 224.

12263. May restore to citizenship.

Cited in *State ex rel. Bottomly v. District Court*, 73 Mont. 541, 550, 237 Pac. 525.

12264. Parole of prisoners in state prison.

The effect of a parole granted to a convict is to suspend the execution of the judgment until the end of the term of imprisonment or until the paroled prisoner is arrested for breach of the parole; hence when such a prisoner was not rearrested after parole and enjoyed

his liberty from the time of his discharge until the end of his term, he was thereafter prima facie rightfully at large and not subject to further restraint for the crime for which he was committed to prison. *Anderson et al. v. Wirkman*, 67 Mont. 176, 216 Pac. 224.

CHAPTER 50.

PROCEEDINGS IN BASTARDY.

12267. Complaint in bastardy, what to contain, how entitled.

Cited in *Daley et al. v. Torrey et al.*, 71 Mont. 513, 516, 230 Pac. 782.

12269. Lien upon real property, how created and for what.

Sections 12269, 12270 were cited in *Daley et al. v. Torrey et al.*, 71 Mont. 513, 517, 230 Pac. 782.

CHAPTER 51.

PROCEEDINGS AGAINST DELINQUENT CHILDREN AND JUVENILE DELINQUENTS.

12275. Definition of juvenile delinquents.

In the absence of a statute to that effect, the marriage of a female minor, while releasing her from parental authority, does not change her status to that of an adult, and therefore under the juvenile delinquent law, a married

female under the age of eighteen may properly be committed to the State Vocational School for Girls until she attain the age of twenty-one years. State ex rel. Foot v. District Court, 77 Mont. 290, 49 A. L. R. 398, 250 Pac. 973.

12276. What children deemed juvenile delinquents—Evidence, when used.

Cited in State ex rel. Foot v. District Court, 77 Mont. 290, 293, 49 A. L. R. 398, 250 Pac. 973.

12280. Procedure on arrest of juvenile delinquents—Detention—Jurisdiction of courts. When any child under eighteen years of age is taken into custody, or arrested under the provisions of this chapter, such child shall be taken directly before the district court, or, if the district court is not then in session in said county, it may be taken before a justice of the peace or police magistrate, who shall at once notify the chief probation officer of the county, who shall make investigation of such case as in other cases where complaint has been made or petition duly filed and after investigation, as herein provided, by the said chief probation officer, then the justice of the peace or police magistrate shall act as a committing and examining magistrate only; and it shall be his duty to proceed with the hearing thereof, after granting to the child, or such person as may be representing it, reasonable opportunity to obtain counsel, if counsel be desired by the accused child, and as soon as the said accused child can procure its witnesses. Provided, that nothing herein shall be construed as prohibiting the officer arresting or taking into custody such child from detaining such child in the county or city jail, in a cell or room especially prepared for that purpose, and separate from any other prisoners detained in such jail, except that male and female children shall not be detained in the same cell or room, until such child can be taken before the court or magistrate as herein provided. In case the examining magistrate hold the child for trial in the district court, it shall be the duty of the magistrate to transfer the case to said district court and the probation officer having the child in charge shall take the child before the said district court, and the said district court shall proceed to hear and dispose of the case in the same manner as if said child had been brought before such court upon petition originally filed as hereinbefore provided; or, when necessary, when the delinquency charged would otherwise constitute a felony, may direct such child to be kept in proper custody until investigation, and an information may be filed as in other cases of felony or misdemeanor under the laws of the state; provided, that nothing herein shall be construed to confer jurisdiction upon any justice of the peace or police court to try any case against any child under eighteen years of age. In any case the court shall require notice to be given and in-

vestigation to be made as in other cases under this act, and may adjourn the hearing from time to time for that purpose.

Amd. Sec. 1, Ch. 52, L. 1923.

CHAPTER 52.

JUSTICE'S AND POLICE COURT PROCEEDINGS—APPEALS.

12302. Proceedings, must be by complaint.

Defendant, charged with wrongfully obstructing an alley, was proceeded against under the statute governing criminal procedure in police courts, convicted and appealed to the district court, where the complaint was dismissed. Held, on appeal by the city that, the statute not granting the right of appeal to cities in

criminal causes tried in justice or police courts, the appeal did not lie. *City of Miles City v. Drum*, 60 Mont. 451, 199 Pac. 719.

For text treatment of this subject see vol. 8 Cal. Jur. 660.

CHAPTER 53.

THE WRIT OF HABEAS CORPUS.

12348. Who may prosecute writ.

This and the following sections of the habeas corpus law were cited as sections 9630-9662, Revised Codes, in *State v.*

District Court, 61 Mont. 558, 567, 202 Pac. 756.

12360. When court may discharge the party.

Cited in *In re Shaffer*, 70 Mont. 609, 613, 227 Pac. 37.

12362. Grounds of discharge in certain cases.

For discussion of the presumption as to the jurisdiction of the trial court in a criminal case and collateral attack upon recitals in its judgment, see *In re Shaffer*, 70 Mont. 609, 227 Pac. 37.

Cited in *State ex rel. Boone v. Tullock*, 72 Mont. 482, 493, 234 Pac. 277.

For text treatment of this subject see vol. 13 Cal. Jur. 222 et seq.

12367. Judge, when to remand.

Cited in *In re Shaffer*, 70 Mont. 609, 613, 227 Pac. 37.

12376. Party may be discharged or remanded.

Cited in *In re Shaffer*, 70 Mont. 609, 613, 227 Pac. 37.

CHAPTER 54.

CORONER'S INQUEST.

12386. Testimony in writing, and where filed.

This and section 12387 were cited as sections 9668, 9669, Revised Codes, in

State v. Belland, 59 Mont. 540, 548, 197 Pac. 841.

CHAPTER 55.

SEARCH-WARRANTS.

12394. Search-warrant defined.

The general provisions of sections 12394-12414, with reference to the issuance of search-warrants, were not amended or modified by the provisions of

the Prohibition Enforcement Act. State v. Tesla et al., 69 Mont. 503, 223 Pac. 107.

Cited in State v. English, 71 Mont. 343, 346, 229 Pac. 727.

Sections 12394-12413 were cited in State v. Certain Intoxicating Liquors, 71 Mont. 79, 86, 227 Pac. 472.

This and the following five sections were cited as sections 9676 to 9681, Revised Codes. State ex rel. Samlin v. District Court, 59 Mont. 600, 606, 607, 198 Pac. 362.

For text treatment of this subject see vol. 23 Cal. Jur. 182.

12396. It cannot be issued but upon probable cause.

Cited in State v. Rice, 73 Mont. 272, 278, 235 Pac. 716; State v. English, 71 Mont. 343, 346, 229 Pac. 727.

12397. Magistrates must examine on oath, complainant, etc.

This section declares that a magistrate before issuing a search-warrant must take the deposition of any witness in writing. The warrant was issued upon an affidavit. Held, that the departure did not render the warrant illegal, the words "deposition" and "affidavit" having been used interchangeably in the chapter of the codes relating to search-warrants. State v. English, 71 Mont. 343, 229 Pac. 727.

Where a deputy county attorney had presented a verified complaint for a search-warrant based upon the affidavit of another, and the district judge examined the latter under oath, the fact that he did not also examine the complainant himself, as required by this section, did not render the warrant illegal, since the only information the complainant had was that obtained from the affi-

ant and an examination of the former would have been useless. State v. English, 71 Mont. 343, 229 Pac. 727.

Where probable cause for the issuance of a search-warrant was shown by the deposition of the complainant, disclosing time, place and manner of an alleged violation of the liquor law, the requirements of this section and 12398 were sufficiently complied with, and the fact that the complaint for the warrant did not set forth the time of the commission of the offense did not render the warrant illegal. State v. Tesla et al., 69 Mont. 503, 223 Pac. 107.

Cited in State ex rel. Stange v. District Court, 71 Mont. 125, 129, 227 Pac. 576.

For text treatment of this subject see vol. 23 Cal. Jur. 182.

12398. Deposition, what to contain.

Applied with section 12397 in State v. Tesla et al., 69 Mont. 503, 223 Pac. 107.

12399. When to issue warrant.

Cited in State v. Tesla et al., 69 Mont. 503, 508, 223 Pac. 107.

12400. Form of warrant.

Cited in State v. English, 71 Mont. 343, 346, 229 Pac. 727.

12405. Within what time warrant must be executed.

Cited in State v. Certain Intoxicating Liquors, 71 Mont. 79, 86, 227 Pac. 472.

12407. Property, how disposed of.

Sections 12407-12409 were cited in State v. Certain Intoxicating Liquors, 71 Mont. 79, 87, 227 Pac. 472.

12413. Depositions, warrants, etc., to be returned by magistrate to district court.

Cited in State v. English, 71 Mont. 343, 347, 229 Pac. 727; State v. Certain Intoxicating Liquors, 71 Mont. 79, 87, 227 Pac. 472; State ex rel. Thibodeau v. Dis-

trict Court, 70 Mont. 202, 205, 224 Pac. 866; State ex rel. King v. District Court, 70 Mont. 191, 224 Pac. 862.

CHAPTER 59.

DISPOSITION OF FINES AND FORFEITURES.

12433. Fines, costs and forfeitures, how disposed of. All fines and forfeitures collected in any court, except police courts, must be applied to the payment of the costs of the case in which the fine is imposed or the forfeiture incurred; and after such costs are paid, the residue must be paid to the county treasurer of the county in which the court is held and if not otherwise provided by law, by him credited to the general school fund of said county; and at the time of payment of any such fine or forfeiture there shall be filed with the county treasurer, a complete statement showing the total of the fine or forfeiture received or incurred with an itemized statement of the costs incurred by the county in such action, which statement shall give the title of the cause and be subscribed by the person or officer making such payment.

Amd. Sec. 1, Ch. 83, L. 1923.

Cited in *County of Wheatland v. Van et al.*, 64 Mont. 113, 116, 207 Pac. 1003.

PART III.

Penal and Reformatory Institutions.

CHAPTER 1.

THE STATE PRISON.

12447.1. Wearing apparel factory at state prison authorized. The state board of prison commissioners of the state of Montana is hereby authorized and empowered, and it shall be its duty, to construct, maintain and operate at the Montana state prison, as soon as may be possible, a factory for the manufacture of wearing apparel. In connection with the operation of such factory the warden shall make requisition to the purchasing department of the state for the purchase of all necessary materials used in the manufacture of wearing apparel and products as contemplated by this act. All wearing apparel so manufactured at said penitentiary and not required for use therein, shall be sold to the state for use by the state in any of the public institutions owned or managed and controlled by the state, at and for such price as shall be fixed and determined by the state purchasing agent and warden of the state penitentiary, provided, however, that none of said wearing apparel shall be sold in the open market in competition with the products of free labor.

En. Sec. 1, Ch. 152, L. 1927.

12447.2. Supervision—Disposal of moneys. The warden of the Montana state prison shall be the superintendent of such factory and shall conduct the same under the supervision of the said board of prison commissioners; he shall keep accounts of all transactions. All moneys received by said warden from the sale of such wearing apparel shall be deposited by him monthly with the state treasurer and be credited to

the prison factory revolving fund, hereby created. Out of such fund there shall be paid such claims as are approved by the warden and the state board of examiners for expenses incident to the operation of such factory. As often as there shall accrue in said fund any profits amounting to the sum of one thousand dollars (\$1,000) from the operation of said factory, the same shall be paid into the general fund of the state.

En. Sec. 2, Ch. 152, L. 1927.

12447.3. Skilled labor may be employed. That for the purpose of operating said factory, there shall be used and employed the prisoners confined in said state penitentiary, and the warden is hereby authorized to employ such skilled laborers only as in his judgment and in the judgment of the board of prison commissioners, may be necessary for the feasible and profitable employment of the said prisoners, provided however, that no skilled laborers shall be employed if prison labor can be made use of.

En. Sec. 3, Ch. 152, L. 1927.

12447.4. Warden to execute contracts. The warden of the state penitentiary, with the consent of the state board of prison commissioners is hereby authorized and empowered to enter into any agreement relative to state uses of the products of such factory.

En. Sec. 4, Ch. 152, L. 1927.

12447.5. Machinery for manufacture of auto number plates to be provided. That the sum of twenty-five thousand dollars (\$25,000), or so much thereof as may be necessary, be, and the same is hereby appropriated out of the moneys received from automobile license fees for the purpose of purchasing and installing machinery and purchasing materials for the manufacturing of auto license number plates, auto name plates, chauffeurs' badges, road markers and street markers. The sums hereby appropriated shall be deducted from the fund received by the register of motor vehicles for automobile licenses before any distribution of such funds shall be made to the several counties.

En. Sec. 1, H. B. No. 124, page 526, L. 1927.

12447.6. Installation of machinery at state penitentiary. The registrar of motor vehicles is hereby empowered and directed to purchase and install, in a suitable building, owned by the state of Montana, and located at the state penitentiary at Deer Lodge, Montana, all the necessary machinery for manufacturing auto license number plates, chauffeur's badges, road markers, street markers. and auto name plates, to be used or distributed by the state of Montana.

En. Sec. 2, H. B. No. 124, page 526, L. 1927.

12447.7. Plates to be manufactured where. That after the passage and approval of this act, all auto license number plates, auto name plates, road markers, street markers and chauffeurs' badges used or distributed by the registrar of motor vehicles, on and after January 1st, 1928, shall be manufactured by the state of Montana at Deer Lodge,

Montana, and such manufacturing plant shall be under the direction of the registrar of motor vehicles and the state board of examiners.

En. Sec. 3, H. B. No. 124, page 526, L. 1927.

12447.8. Employees, how paid. All paid employees necessary for the purpose of carrying out this act shall be selected and employed by, and the salary of such employees fixed by the registrar of motor vehicles and approved by the state board of examiners.

En. Sec. 4, H. B. No. 124, page 526, L. 1927.

12447.9. Employees, how selected. In so far as is possible all employees necessary for the purpose of carrying out the provisions of this act shall be selected from the inmates of the state penitentiary, who shall serve without compensation.

En. Sec. 5, H. B. No. 124, page 526, L. 1927.

12447.10. Report of registrar. The registrar of motor vehicles shall make a biannual report of the operation of the manufacturing plant herein provided for to the governor of the state of Montana.

En. Sec. 6, H. B. No. 124, page 526, L. 1927.

12447.11. Disposal of profits. All profits derived from the manufacturing plant herein provided for shall be distributed in the same manner as automobile license fees are distributed.

En. Sec. 7, H. B. No. 124, page 527, L. 1927.

12455. Commutation of sentence upon good behavior.

Cited in State ex rel. Bottomly v. District Court, 73 Mont. 541, 548, 237 Pac. 525; Anderson et al. v. Wirkman, 67 Mont. 176, 187, 215 Pac. 224.

12456. Good behavior allowance for convicts in certain employment.

Cited in State ex rel. Bottomly v. District Court, 73 Mont. 541, 550, 237 Pac. 525.

CHAPTER 2.

COUNTY JAILS.

12468. County jails, by whom kept and for what used.

Cited as section 9759, Revised Codes, in Majors v. County of Lewis and Clark, 60 Mont. 608, 615, 201 Pac. 268.

12472. Sheriff to receive prisoners committed by courts.

Rep. Sec. 3, Ch. 120, L. 1923.

Under this section, counties must furnish the use of their jails without compensation for the accommodation of federal prisoners, the United States govern-

ment being required to pay for their support or subsistence only. Majors v. County of Lewis and Clark, 60 Mont. 608, 201 Pac. 268.

12472.1. Sheriff to receive federal prisoners when. The sheriff must receive, and keep in the county jail, any prisoner committed thereto by process or order issued under the authority of the United States, until he

is discharged according to law, as if he had been committed under process issued under the authority of this state.

En. Sec. 1, Ch. 120, L. 1923.

12472.2. Support of prisoners. Provision and agreement for the support of such prisoners shall first be made by the United States through or by the proper officer or officers by a written agreement, signed by the sheriff of such county, and approved by the board of commissioners, upon the following terms and conditions:

The United States shall pay to the sheriff of the county wherein such prisoners are committed the regular fees allowed per day to such sheriff by the laws of this state for the support and subsistence of state prisoners, and, in addition thereto, shall pay into the county treasury of the county in which such jail is situated the sum of twenty-five cents per day for the use of the jail and for the purpose of defraying in part the expenses incident to lighting, heating and caring for such jail, and for the upkeep thereof.

En. Sec. 2, Ch. 120, L. 1923.

12473. Sheriffs answerable for safekeeping of such prisoners.

Cited as section 9764, Revised Codes, in *Majors v. County of Lewis and Clark*, 60 Mont. 608, 615, 201 Pac. 268.

CHAPTER 4.

STATE PAROLE COMMISSIONER.

12516 to 12518 inclusive. Relating to state parole commissioner.

Rep. Sec. 2, Ch. 138, L. 1923.

12516.1. Parole commissioner abolished. The office of parole commissioner of the state of Montana is hereby abolished.

En. Sec. 1, Ch. 138, L. 1923.

CHAPTER 5.

STATE VOCATIONAL SCHOOL FOR GIRLS.

12520. Purpose of school.

Sections 12520, 12521 were cited in *State ex rel. Johnson v. Kassing*, 74 Mont. 25, 30, 238 Pac. 582.

12533. Curriculum.

Sections 12533-12535 and 12537 were cited in *State ex rel. Johnson v. Kassing*, 74 Mont. 25, 30, 31, 238 Pac. 582.

12534. Powers of executive board.

Cited in *State ex rel. Johnson v. Kassing*, 74 Mont. 25, 32, 238 Pac. 582.

12535. Commitment of girls to vocational school.

Cited in *State ex rel. Johnson v. Kassing*, 74 Mont. 25, 31, 238 Pac. 582.

12536. Health certificate and order of commitment.

Under the juvenile delinquent law, a married female, under the age of eighteen, may properly be committed to the vocational school for girls until she attains the age of twenty-one years. *State ex rel. Foot v. District Court*, 77 Mont. 290, 49 A. L. R. 398, 250 Pac. 973.

12539. Term of commitment—Paroles.

Cited in *State ex rel. Foot v. District Court*, 77 Mont. 290, 292, 49 A. L. R. 398, 250 Pac. 973.

TABLE OF SESSION LAWS.

The following table shows the location in this Supplement of all Chapters of the Session Laws of Montana of 1923, 1925 and 1927, and indicates those which have been omitted. The left-hand column gives the Chapter of the Session Act; right-hand column the section number in this Supplement.

1923		1923—Continued	
Chap. Sec.	Supplement.	Chap. Sec.	Supplement.
1	2200.1-2200.3	31 18	5507 as amended
2	3154.1-3154-10	19	5515
3	2122.1-2122.18	20	5516
4	1015.1-1015.6	32	8275 as amended
5	463.1- 463.3	33	3778.3-3778.4
6 1	1928A-B	34	1019.1-1019.4
2	1930	35 1	2622
3	1932A-B	2	2627
7	3778.1-3778.2	3	2628
8	6258.1-6258.2	4	2629
9	Rep. Ch. 89, L. 1927	5	2630
10	Rep. Ch. 60, L. 1927	8	2631
11 1	7147 as amended	7	3568
2	7148	8	3569
12	1744.1	9	3570
13	Rep. Ch. 89, L. 1927	10	3571
14	1215 as amended	11	3282
15	8813.1	36	3202 as amended
16	5238.1	37	2083
17	5266 as amended	38	4639.1-4639.5
18	1023	39	Rep. Ch. 122, L. 1927.
19 1	1280	40 1	350
2	1282 as amended	2	350A
3-4	1282.1-1282.2	3	350B
20	6124	4	351
21 1	4614 as amended	5	352
2	4622 as amended	6	354
22	3202.1-3202.2	7	354A
23	8291	8	355
24	2561.1-2561.6	9	358
25	4502-4504	10	360
26	3324	11	361
27	9799.1	12	363
28	8370	13	363.1
29 1	3341	41 1	3574.1
2	3341.1	2	Rep. Ch. 124, L. 1927
30	210.1 as amended	3	3588 as amended
31 1	5404	4	3588A-B
2	5405	5	3589
3	5411	6	3589A as amended
4	5413	42	1415
5	5415	43	587-588
6	5418	44	3257.1
7	5442	45	5086.1
8	5443	46	2191
9	5444	47	4818.1
10	5448	48	2211
11	5449	49	860 as amended
12	5465 as amended	50	11528
13	5466	51	2623A
14	5470	52	12280
15	5471	53	8867.1
16	5487	54 1	7189A
17	5502 as amended	2	7231A

TABLE OF SESSION LAWS.

1923—Continued		Supplement.
54	3	7190-7192
55	1	9485
	2	9487
56		4565
57		1560.1-1560.12
58		3043.1-3043.8
59		4138.1-4138.9
60		4508-4512
61		3350.1-3350.3
62		11515A
63		Rep. Ch. 77, L. 1925
64		2313.1-2313.11
65	1	10377.1 as amended
	2	10377.2
	3	10377.3 as amended
	4	10377.4
	5-10	10377.5-10377.10
	11	10377.11 as amended
	12	10377.12 as amended
	13	10377.13 as amended
	14	10377.14 as amended
	15	10377.15 as amended
	16	10377.16
	17	10377.17
	18	10377.18 as amended
	19	10377.19 as amended
	20	10377.20
	21-26	10377.21-10377.26
66		293.1-293.13
67		2398-2405
68	1	1042 as amended
	2	1043 as amended
	3	1044 as amended
	4	1045 as amended
	5	1047
	6	1048 as amended
69		1275
70		1010 as amended
71		2172.1
72		4541.1-4541.25
73	1-3	3417.1-3417.3
	4	2081
	4½	2081.1
74		Omitted
75		Rep. Ch. 121, L. 1927.
76		3350.4-3350.6
77	1	3652 as amended
	2	3653 as amended
	3	3681 as amended
	4	3685 as amended
	5	3694 as amended
	6	3695
	7	3696 as amended
	8	3697 as amended
	9	3699 as amended
	10	3700 as amended
	11	3701
	12	Rep. Ch. 192, L. 1925
	13	3703 as amended
	14	3704 as amended
	15	3707
	16	3714
	15	3722 as amended
	17½	3745
	18	3723 as amended

1923—Continued		Supplement.
77	19	3730 as amended
	20	3731 as amended
	21	3732 as amended
	22	3733 as amended
	23	3742 as amended
	24	3751
	25	3753
78		210
79		4811
80		4884.1
81		2165.1
82		4874
83		12433
84		Rep. Ch. 89, L. 1927
85		182
86		4622.1
87		3778.5-3778.6
88	1	Rep. Sec. 144, Ch. 89, L. 1927
	2	Rep. Sec. 144, Ch. 89, L. 1927
89		4767 as amended
90		Rep. Ch. 89, L. 1927
91		3778.7-3778.8
92		4751
93		Rep. Ch. 89, L. 1927
94		Rep. Ch. 60, L. 1927
95		4465 as amended
96	1	2169.1
	2	2169
	3	2171
	4	2174 as amended
	5	2176
	6	2180
	7	2181
	8	2182
	9	2161
	10	2163
	11	2165
97		Omitted. See Constitution
98		540.1-540.2
99		162
100		8290.1
101		1749.1-1749.2
102	1	2238 as amended
	2	2239
103	1	7235.1
	2	7236
104		1211-1212
105		3859 and 3875
106		8593.1
107		1760 as amended
108		Rep. Ch. 57, L. 1927
109		7342
110		198.1-198.8
111		Rep. Ch. 57, L. 1927
112		6453-6455
113		10256
114		5159
115		Omitted
116		Rep. Initiative No. 30, p. 603, L. 1927
117	1	4824
	2	4824.1
118	1	4268

TABLE OF SESSION LAWS.

1923—Continued			1923—Continued		
Chap.	Sec.	Supplement.	Chap.	Sec.	Supplement.
118	2	4270	152	2	8377
	2A	4270.1	153		Rep. Ch. 147, L. 1927
119	1	5098	154		3858.1-3858.11
	2	5097	155		Omitted
	3-5	5099-5101	156		5194 as amended
	6	5106	157	1	7166 as amended
120		12472.1-12472.2		2	7171
121		5520.1-5520.120		3	7173 as amended
122		1015		4	7174
123		1015.7		5	7177
124		443 as amended		6	7184
125		1301.1-1301.9		7	7210
126		1294		8	7212
127		1271		9	7214
128		1254.1-1254.8		10	7215
129		1254.9-1254.16		11	7220
130		1254.17-1254.24		12	7224
131	3	944		13	7226
	8	1088-1104		14	7227
132		Rep. Ch. 95, L. 1925		15	7228
133	1	640 as amended		16	7229
		641		17	7230
		645		18	7234 as amended
		651 as amended		19	7235
		652		20	7235A-7235B
	2	644	158		2000.1
134		See Article XXI, Constitu- tion	159		180 as amended
135		5228-5229	160		5520.121-5520.252 including amendments
136		5039.1	161	1	7211
137		Omitted		2	7216
138		12516.1		3	7218
139		Omitted	162		Omitted
140		2726	163		Omitted
141		1652	164		1455.1-1455.8
142		Omitted	165	1	3645
143		8412		2-3	Omitted
144		6445	Page 612		Article XVI, Sec. 7, Con- stitution
145		6236	Page 613		Article XII, Sec. 15, Con- stitution
146	1	2299	Page 615		Referendum No. 25. See Sec. 5654.1
	2	2300	Page 623		Boundaries Lake County. See Sec. 4327.1
	3	2302			
	4	2303			
	5	2303.1			
147	1	3956 as amended			
	2	3960			
	3	3965			
	4	3968			
	5	3969			
	6	3970			
	7	3973			
	8	3974			
	9	3975			
	10	3990			
	11	Rep. Sec. 123, Ch. 60, L. 1927			
148		6537			
149		2272.1-2272.7			
150	1	2382 as amended			
	2	2383 as amended			
	3	2392 as amended			
151	1	717			
	2	718			
	3	721			
152	1	8375			

TABLE OF SESSION LAWS.

1925—Continued		Supplement.
Chap. Sec.		
15		620
16		687
17		287
18		2153 as amended
19		9746
20		3051.1 as amended
21		412
22		9453
23		8339
24		2238
25		1189-1190
26		Omitted
27		5916.1-5916.2
28	1	5918
	2	5926
29		230.1
30	1	4358.1
	2	4358.2
31		3267.1-3267.2
32		Omitted
33		Omitted
34	1	2645
	2	2645.1
35		Omitted
36		Omitted
37		Omitted
38		3202
39		9732
40	1	4056
	2	4061
41		860
42		3589A
43		2038
44	1	5520.129
	2	5520.152
	3	5520.154
	4	5520.155
	5	5520.157
	6	5520.160
	7	5520.161
	8	5520.168
	9	5520.202
	10	5520.210
	11	5520.216
	12	5520.217
	13	5520.218
	14	5520.219
	15	5520.223
	16	5520.225
	17	5520.226
	18	5520.246
	19	5520.247
	20	5520.249
	21	5520.250
45		3385
46		7265A
47	1	2255
	2	2257
48		Omitted
49		5216
50	1	7280
	2	7282
	3	7283
	4	7283A to 7283D
	5	7284

1925—Continued		Supplement.
Chap. Sec.		
51		1401
52		4978
53		3403
54		5546.1-5546.3
55		9927
56		3547.1-3547.4
57		Rep. Ch. 89, L. 1927
58		619
59		6269
60		4143
61		2000.2-2000.6
62		1215
63		3400.1-3400.6
64		618
65		Rep. Ch. 89, L. 1927
66	1	917
	2	918 as amended
	3	921 as amended
	4	921.1
67		6280
68	1	6489
	2	6490
	3	6492
	4	6494
69		9799
70		1916
71		5039.2
72		Rep. Ch. 89, L. 1927
73		Rep. Ch. 89, L. 1927
74		123.1
75		4402-4403
76		1010 as amended
77		Omitted
78		Rep. Initiative No. 30
79		3127
80		3764
81		4272
82		964
83		10536
84		4614
85		210.1 as amended
86		6969
87		10728
88		1199
89		7248.1-7248.8
90		Rep. Ch. 60, L. 1927
91		Omitted
92		198.9-198.16
93	1	4318
	2	4327
94		10030
95		145.1-145.7
96		1280.1
97		974
98		Rep. Ch. 89, L. 1927
99		4614 and 4622
100		7264.1-7264.9
101		Rep. Ch. 57, L. 1927
102		1282
103	1	3858.6
	2	3858.7
104		Rep. Ch. 47, L. 1927
105		1036.1-1036.2
106		4396.1-4396.2
107		1275

TABLE OF SESSION LAWS.

Chap. Sec.	1925—Continued Supplement.
108	458.1-458.6
109	3407.1-3407.11
110	9575.1-9575.10
111	180 as amended
112	7166
113	1763.1-1763.21
114	916
115	5039 as amended
116	8275
117	2849
118	632 as amended
119	6109.1-6109.11
120	1
	2
121	1
	2
	3
	4
	5
	6
	7
	8
	9
	10
	11
	12
	13
	14
	15
	16
	17
122	2990A
	270
123	1
	3
124	3210
	3211A
125	439
	1
	2
	3
	4
	5
	6
	7
126	1
	2
	3
127	1
	2
128	2357
	2368
	1622
129	1783
130	5149-5150
131	10904
132	6079.1
133	Rep. Ch. 89, L. 1927
134	Rep. Ch. 60, L. 1927
135	3956
136	7234
137	4767 as amended
138	Omitted
139	Omitted
140	4520.1-16 as amended
141	1
	2
	3
	4
142	4632
	4633
	4864
	4868
	2268-2270

Chap. Sec.	1925—Continued Supplement.
143	2095
144	3617.1 as amended
145	7594
146	9409
147	3649.1-3649.3
148	5148A
149	1529
150	1
	2
	3
	4
	5
	6
	7
151	10377.1 as amended
	10377.11 as amended
	10377.12
	10377.14
	10377.15 as amended
	10377.18
	10377.19
	1015.8
152	1271.1
153	3572.1-3572.2
154	Omitted
155	3808-3808.1
156	5251
157	4774
158	199.1
159	663
160	1
	2
	3
	4
	5-7
161	930.1
	930.2
	930.3
	841
	930.4-930.6
162	3685 as amended
163	5520.575
164	5238
165	1749
166	3570.1
167	3570.2
168	Omitted
169	Rep. Ch. 60, L. 1927
170	Omitted
171	Omitted
	1
	2
	3
	4
	4½
	5
	6
	8
172	3156
	3157
	3158 as amended
	3159
	3161
	3165
	3166
	3167
173	Rep. Sec. 144, Ch. 89, L. 1927
	5465
	5502
	5503
	5507
174	3588
175	1
	2
176	5201
	5623.1-5623.8
177	1755 as amended
178	1040 to 1045 and 1048
179	1830.1-1830.10
180	2122.20 to 2122.23
181	3566.1-3566.5
182	2421.1-2421.8
183	2421.9-2421.15
184	2421.16-2421.23
185	1
	2099

TABLE OF SESSION LAWS.

1925—Continued			1927—Continued		
Chap.	Sec.	Supplement.	Chap.	Sec.	Supplement.
185	2	2101	14		651
	3	2103	15		1912
	4	2105	16	1	9442
186	1	2382		2	9444
	2	2383	17		2396.19-2396.20
	3	2384	18		2396.16-2396.18
	4	2389	19		2396.1-2396.15
	5	2392	20		5039
187		2622.1-2622.2	21		893.1-893.2
188		2622.3 as amended	22		5070
189		1904	23		Rep. Sec. 144, Ch. 89, L.
190		Rep. Ch. 60, L. 1927			1927
191	1	2089 as amended	24		5033.1
	2	2090 as amended	25		5217-5218
192	1	3652	26		5116.1
	2	3653	27		3524
	3	3655 as amended	28		3504
	4	3656 as amended	29		4520.1-4520.16
	5	3659	30		4545
	6	3661 as amended	31		5942.1
	7	3662	32		4549
	8	3664	33		4979.1-4979.5
	9	3665 as amended	34		6449.1-6449.7
10		3666	35		Omitted
11		3677	36		8933
12		3681 as amended	37		3327.1-3327.2
13		3682 as amended	38	1	7122
14		3685 as amended		2	7124A
15		3694 as amended	39		8273
16		3696 as amended	40		319.1
17		3697 as amended	41		11473.1
18		3698	42		9441.1
19		3699	43		2114
20		3700 as amended	44	1	3158
21		3701 as amended		2	3166A
22		3704 as amended	45		7147
23		3706	46		5250
24		3717	47		5044.1-5044.2
25		3714 as amended	48		443
26		3725 as amended	49		11039.1
27		3727	50		3592.1-3592.9
28		3733 as amended	51		3617.1
29		3735	52		103
30		3741	53		831
31		3777	54		4465
33		3777.1	55		4527
Initiative No. 28; 2344.1-2344.17			56		540.3
Boundaries Petroleum County, page 506:			57		6355.1-6355.51
4337.1			58	1-5	5117-5121
				6-7	5123-5124
				8	5126
				9-17	5127-5135
1		3051.1-3051.3		18	Omitted
2		180		19	5125.1
3		632	59	1	3654
4		1520		2	3655
5		6003		3	3656
6		852-854		4	3661
7		639		5	3665
8		2154.1-2154.7		6	3681
9		3847.1-3847.3		7	3682
10		2622.3		8	3683
11		10295		9	3685
12		10482		10	3689
13		1560.13-1560.14		11	3691

TABLE OF SESSION LAWS.

1927—Continued			1927—Continued		
Chap.	Sec.	Supplement.	Chap.	Sec.	Supplement.
59	12	3694	94	3	1270
	13	3696	95		2778.1-2778.8
	13A	3697	96		320-324
	14	3700	97	1	5272
	15	3701		2	5276
	16	3703	98		662
	17	3704	99		1373.1
	18	3714	100		5096.1-5096.10
	19	3722	101		2087.1-2087.5
	20	3723	102		1622.1-1622.2
	21	3725	103	1	4551
	22	3730		2	4552
	23	3731		3-12	4554-4562½
	24	3732	104		3546.1-3546.6
	25	3733	105	1	10377.1
	26	3734		2	10377.11
	27	3736		3	10377.115
	28	3742		4	10377.116
	29	3742.1	106		4814-4814.1
	30	Omitted	107		4470.1-4470.2
	31	3742.2	108		1882.1-1882.24
	32	3670	109		3913.1-3913.22
60		1805.1-1805.123	110		2002.1-2002.2
61		5285	111		4916
62		537.1	112		78.1-78.4
63		3338	113		2153
64		2067	114		Omitted
65		2460.1-2460.3	115		1037.1-1037.5
66		1808.1	116		7173
67	1-2	10212-10213	117		1271.2
	3	10220	118	1	1051
68		3123-3124		2	1051.1
69		5176		3	971
70		10251-10252		4	971.1
71		4944	119		1201.1-1201.4
72		See Constitution, Art. XVI, Sec. 4	120		Omitted
73		10434	121		3350.7-3350.14
74		1763.11	122		11048.1-11048.2
75		4465.1-4465.2	123		1759.1-1759.4
76		Rep. Ch. 147, L. 1927	124		3575.1-3575.8
77	1	1010	125		640
	2-3	1010.1-1010.2	126		673.1-673.8
78		3382	127		206.1-206.2
79		2122.19	128		5039.3
80		1743	129		1755
81		210.1	130		8385
82	1	918	131		2197.1
	2	921	132		1281
83		440.1	133		5653
84		3376.1-3376.4	134		4767
85	1	2214	135		5138
	2	2215	136		3572.3-3572.8
	3	2235	137		105
	4	2235.1	138		1024
86		1121	139		2089-2090
87		1075	140		2096.1-2096.2
88		1760-1760.1	141	1	10377.3
89		6014.1-6014.144		2	10377.13
90		3787		3	10377.15
91		3186	142		3569.1-3569.3
92		2209.1-2209.2	143	1	5259
93		8868		2	5260
94	1	1266		3	5261
	2	1267		4	5265
				5	5269

TABLE OF SESSION LAWS.

		1927—Continued
Chap.	Sec.	Supplement.
143	6	5271
	7	5266
144		4639.6
145		9947
146		Omitted
147		1224.1-1224.34
148		5215.1
149		259.1-259.6
150	1	1116
	2	1116A
	3	1117
	4	1118
	5-8	1124-1127

		1927—Continued
Chap.	Sec.	Supplement.
151		440.2-440.5
152		12447.1-12447.4
153		162
H. B. 87,	page	
505,	Sec. 1	3645.1
H. B. 124,	page	
526		12447.5-12447.11
Initiative No.		
30		11048.3
Initiative No.		
31		2382-2383-2392

INDEX

SUPPLEMENT TO THE CONSTITUTION OF MONTANA

BOARD OF EQUALIZATION Art. Sec.	LEGISLATIVE ASSEMBLY Art. Sec.
See Equalization, County Board of	Power to merge city and county governmentsXVI 7
	election to be held.....XVI 7
CITY GOVERNMENT	
Legislature may merge or abolishXVI 7	
COUNTY BOARD OF EQUALIZATION	
See Equalization, County Board of	
COUNTY COMMISSIONERS	
Proposed amendment commissioner districts, how formedXVI 4	
election and term.....XVI 4	
vacancies, how filled.....XVI 4	
COUNTY GOVERNMENT	
Legislature may merge or abolishXVI 7	
COUNTY SUPERINTENDENT OF SCHOOLS	
Qualifications IX 10	
DONATIONS	
Acceptance by state	
See Permanent Revenue School Funds.....XXI	
EQUALIZATION COUNTY BOARD OF	
AppointmentXII 15	
CompositionXII 15	
DutiesXII 15	
Political activities prohibited..XII 15	
PowersXII 15	
QuorumXII 15	
SalariesXII 15	
TermXII 15	
VacanciesXII 15	
FUNDS	
See Permanent Revenue School FundsXXI	
GIFTS	
Acceptance by state	
See Permanent Revenue School FundsXXI	
JUSTICES SUPREME COURT	
Supervisory board permanent revenue school funds.....XXI 17	
	MERGE
	City and county government authorizedXVI 7
	PERMANENT REVENUE SCHOOL FUNDS
	Acceptance by state authorized.XXI 1
	Additional legislation authorizedXXI 18
	Compensation for administrationXXI 11
	Disposition in case excessive increaseXXI 16
	Disposal of other contributions.XXI 3
	Interest, how applied.....XXI 11
	Interest rate on loans.....XXI 6
	Investments, how made.....XXI 6
	Justices supreme court advisory boardXXI 17
	Liability of insurance companiesXXI 8
	Loans, how made.....XXI 6
	amortization planXXI 7
	Montana trust and legacy fundXXI 5
	Net earnings
	state permanent revenue fund, disposal of.....XXI 12
	state permanent school fund, disposal ofXXI 13
	permanent revenue fund university, disposalXXI 14
	Other legislation authorized...XXI 9
	To be held in trust.....XXI 2
	Transfer certain contributions authorizedXXI 15
	Treasurer to keep record.....XXI 4
	What other funds may be investedXXI 10
	PROPOSED AMENDMENT ..
	Election county commissioners.XVI 4
	SCHOOL DISTRICT OFFICERS
	Qualifications IX 10
	SUPERINTENDENT OF SCHOOLS
	Qualifications IX 10

INDEX

[References are to Sections]

ABANDONED HORSES

- Abandoned horse fund.....4520.10
- disposal of4520.12
- Assessment of horses..... 4520.9
- Claim of ownership, submission
of4520.6-4520.10
- Declared nuisance 4520.2
- Definition of terms..... 4520.1
- Disposal of proceeds of sale...4520.10
- Effect partial invalidity of act..4520.16
- Foreman of roundup, appoint-
ment and bond..... 4520.5
- duty to keep record of round-
up4520.11
- Individuals prohibited from hold-
ing roundup4520.14
- Limitation of act.....4520.15
- Notice of roundup, how given... 4520.4
- Notice of sale of horses to be
given 4520.8
- Open range defined..... 4520.1
- Owner may claim horses, how... 4520.6
- Proof of ownership, fees..... 4520.7
- Petition for roundup..... 4520.3
- Report of roundup, making and
filing4520.11
- Roundup authorized, procedure.. 4520.3
- notice of how given..... 4520.4
- supervision of 4520.5
- Roundup foreman, appointment
and bond 4520.5
- Sales, notice and time of..... 4520.8

ABSENT VOTERS' LAW

- See Elections: Sub-title, Absent
Voters' Law717-721

ABSTRACTORS

- Renewal of bond, regulation of... 4143

ACCIDENTS

- Automobile drivers to report.... 1744.1

ACCOUNTING

- Methods to be prescribed by
state examiner 210

ACCOUNTS

- Examination by county commis-
sioners 4465
- Examination by state examiner.. 210
- What state accounts to be kept.
See Funds.....198.1-198.8

ACCREDITED HIGH SCHOOLS

- See Schools, Public: Sub-title,
County High Schools...1266-1301.8

ACTIONS

- For recovery excess charges
against railroads, time for
bringing3808-3808.1
- treble damages when awarded.. 3808
- where instituted 3808
- To quiet title. See Quieting
Title9485-9487
- Transfer of on creation new
county 4403
- Trespassing stock, marking bound-
aries land, when necessary.. 3382

ADDITIONS

- To cities and towns, how made.. 4978

ADMINISTRATORS

- See Probate Proceedings

ADULTERATION

- Certain dairy products forbidden. 2623A
- prohibition use of coloring
matter 2627

ADVERTISING

- Contracts for state buildings, etc.
See Buildings.....259.1-259.6
- Contracts for state supplies.... 293.7
- County resources. See County
Commissioners4470.1-4470.2
- Dairy substitutes, regulation of
..... 2622.1-2622.2

AGRICULTURAL EXPERIMENT STATIONS

- Acceptance congressional acts... 893.1
- Who may receive funds..... 893.2

AGRICULTURAL SEEDS

- See Public Warehousemen..3592.1-3592.9

AGRICULTURE

- Registration certificates to be
posted 3566.2
- Registration of bee colonies re-
quired 3566.1
- application for 3566.1
- fees for 3566.3
- penalties for violation act.... 3566.5
- registration fees how ex-
pended 3566.4
- state beekeepers' fund..... 3566.4

AGRICULTURE, DEPARTMENT OF

- Bees, regulation of industry. See
Agriculture3566.1-3566.5

INDEX.

[References are to Sections]

AGRICULTURE, DEPARTMENT OF (Continued)

Commissioner ex-officio real estate commissioner	4056
disposal of fees.....	4061
Contingent revolving account, creation of	3645
County resources, advertising authorized	4470.1
amount of appropriation	4470.2
Dairying, regulation of. See Dairying	3568-3572.8
Dealers in farm produce, regulation of	3649.1
license of	3649.1
prohibition of certain acts....	3649.2
supervision by commissioner...	3649.3
Extension work, duty to carry on	3568
Farm warehousemen, regulation of	4138.7
Registration of names and brands with	2629
Regulation of warehousemen by. See Public Warehousemen.....	3574.1-3592.9
Revolving appropriations account.	3645
State fair earnings, how appropriated	3645
revolving appropriation account	3645.1
Statistics concerning dairy industry, duty to compile.....	3568

ALIEN LAND LAW

Alien forbidden to hold land....	3043.2
Definition of terms.....	3043.1
Disposal of forfeited property..	3043.7
Exceptions	3043.8
Foreclosure of mortgages.....	3043.5
Forfeiture of lands held by aliens	3043.2
Forfeiture of lands when.....	3043.4
Other disqualifications of aliens..	3043.3
Transfers to aliens forbidden when	3043.6
penalty for	3043.6

AMENDMENTS

Constitutional, how placed on ballot	103
Constitutional, how published...	537.1

AMORTIZATION

See Bonds

ANIMALS

Cruelty to, what facts to be alleged and proved.....	11515A
Notice of disposal impounded animals	5176

APPEALS

To supreme court, from what orders taken	9732
time for taking	9732

APPEALS (Continued)

To supreme court, authentication of record	9746
abbreviated record, when presented	9746
Transcript, time for filing.....	9746

APPLES

Classification and quality of apples in boxes.....	4268
Grades and standards defined....	4270
Misbranding defined	4270
Penalty for failure to inspect...	4270.1
Penalty for violation of act....	4272

APPORTIONMENT

School moneys. See Schools Public: Sub-title, Finance..	1201.1-1215
---	-------------

APPRAISAL

State lands, how made.....	1805.17
----------------------------	---------

APPROPRIATION

For advertising county resources.	4470.2
Water. See Water and Water Rights	7122-7124A

ARRESTS

Duty of sheriff with respect to..	4774
Fish and game wardens may make, how and when.....	3659

ASSESSMENT

Property for taxation	
See Taxation	

ASSESSOR

See also Taxation	
Form of blanks and rolls for percentage assessment of property	2000.6
Livestock, duties concerning....	2087.3
Traveling expenses, payment of..	2038

ASSIGNMENTS

Real estate mortgages, filing of..	8259
------------------------------------	------

ASSIGNMENTS FOR BENEFIT OF CREDITORS

Corporate assignments, how executed and where filed.....	8273
--	------

ASYLUMS

See Insane Asylum, State.....	1415
-------------------------------	------

ATHLETIC COMMISSION, STATE

Authority of	4554
Bond required from licensees...	4560
Boxing and wrestling matches licensed by	4554
bond required	4560
regulation of bouts.....	4556
Buildings, regulation of	4555
Clubs to pay tax.....	4559

INDEX.

[References are to Sections]

ATHLETIC COMMISSION,

STATE (Continued)

Creation of	4551
Expenses	4551
Fake bouts prohibited	4558
License to be procured for conducting matches	4554
Penalty for false report or failure to pay tax	4561
Penalty for violation of act.....	4562
Report to be made to governor..	4552
Secretary, appointment of.....	4552
salary	4552
Tax, payment of	4561
penalty for nonpayment.....	4561
Veterans' memorial building.....	4559
Veterans' memorial fund.....	4559
transfer certain moneys to....	4562½

ATTACHMENT

Bank property prohibited.....	6014.96
Stock foreign building and loan associations	6355.32

ATTORNEY GENERAL

Coal dealers' law, duty to enforce	3546.6
Commitment blanks duty to prepare	199.1
Duty to approve proceedings bond issues	1805.103
Duty to take charge delinquent state loans when.....	1805.108
Law enforcement fund transferred to	206.1

ATTORNEYS

Cannot be examined as witnesses when	10536
Fees allowed on foreclosure of liens	9799-9799.1

AUCTIONS

Sale of county property at.....	4465
Sale of state land at....	1805.72-1805.77

AUDITOR, COUNTY

Duties in connection books third class school districts.....	1019.1
In what counties chosen.....	4824
duties how performed in other counties	4824.1

AUDITOR, STATE

Deputy insurance commissioner, appointment by	162
Duties in connection with fiscal agencies	198.13
Ex-officio commissioner of insurance	162
powers and salary.....	162
Salary of deputy	440.4
Salary of deputy insurance commissioner	440.5
What controlling fund accounts to be kept by.....	198.1

AUTOMOBILES

See also Motor Vehicles	
See also Traffic Regulations	
Accidents, duty of driver to report	1744.1
Licensing of. See Motor Vehicles: Sub-title, Registration..	
.....	1755-1763.21
Mileage allowed public officers for use of.....	4884.1
Number plates to be manufactured at state prison.....	12447.5-12447.11
Transportation companies, regulation of. See Railroad Commission: Sub-title, Motor Transportation Companies..	
.....	3858.1-3858.11

BABCOCK TEST

Official dairy test	3570
Regulation of use	3570
Revocation of license to operate when	3570.1

BAILMENT.

Storage of grain deemed...	3588B-3592.7
----------------------------	--------------

BALLOTS

Absent voter. See Election: Sub-title, Absent Voters' Law...	717-721
Constitutional amendments, how printed on	103
Initiative and referendum measures, how printed.....	103
Number to be prepared for each election precinct	687
Primary nominating. See Elections: Sub-title, Primary Nominating Elections.....	649-652

BANK ACT

See Banks and Banking

BANKS

See also Banks and Banking	
City and county money, how deposited	4767
County high school trustees may issue funding bonds on failure of, when.....	1254.9-1254.16
Deposits state money, how regulated	182
Designation as state fiscal agencies	198.9
bond required	198.10
School trustees may issue warrants for moneys on failure of when	1254.1-1254.8
Taxation of	2067

BANKS AND BANKING

Act how designated	6014.1
Act to apply to whom.....	6014.2
Advertisement before issuance charter forbidden..	6014.29-6014.107

INDEX.

[References are to Sections]

BANKS AND BANKING (Continued)

Advertisements to state capital paid in	6014.32
Articles of agreement, form and contents	6014.6
certificate of authority, issuance of	6014.6
examination by superintendent banks	6014.6
rejection of certificate by superintendent final	6014.7
Assessment to make good stock impairment	6014.68
Assets may be pledged for loans when	6014.99
Attachment bank property prohibited	6014.96
Bank Act, scope of	6014.1
institutions governed by	6014.2
Board of directors. See sub-title, Directors	
Bonding of employees required	6014.105
Bond issues, limitation on purchase of	6014.38
Books with list of stockholders to be kept	6014.33
Bookkeeping, superintendent may make rules concerning	6014.100
Borrowed money, regulation indebtedness for	6014.54
Borrowing money, limitations on	6014.110
Branch banks prohibited	6014.101
Building and Loan Assns., payment of fees by	6014.73
Business prohibited when under superintendent of banks	6014.29
By-laws, adoption and contents	6014.13
Capital and capital stock defined	6014.5
Capital stock	
acquired stock, how disposed of	6014.39
advertisements to state amount paid in	6014.32
assessment on to make good impairment	6014.68
commercial and savings banks, amount of	6014.8
directors must own how much	6014.11
how represented and voted at elections	6014.23
increase or diminution, how effected	6014.14
must be paid up before transacting business	6014.30
penalty	6014.30
purchase or loan of prohibited	6014.36
penalty	6014.36
savings bank capital to be vested, how	6014.24
surplus and profits, conversion into	6014.97
transfers of, how effected	6014.22
trust and investment companies may invest how	6014.26

BANKS AND BANKING (Continued)

Certificates of deposit not to issue for borrowed money	6014.111
Certificates of authority, issuance of	6014.6
Certified checks, regulation of issuance	6014.47
Change from national to state bank, procedure	6014.79
Change from state to national bank, procedure	6014.75
certificate of change	6014.78
reduction of capital stock	6014.77
surrender of charter	6014.76
Change of name, how effected	6014.15
Change of place of business, how effected	6014.16
certificate of proceedings	6014.18
procedure	6014.17
Checks, time for presentation	6014.81
liability banks on items forwarded	6014.89
what constitutes due diligence	6014.90
Closing of banks. See sub-title, Liquidation of Banks	
Commercial banks included in act	6014.2
capital stock, amount of	6014.8
defined	6014.4
disposal of acquired stock	6014.39
limitation loans on real estate	6014.27
Concealment losses and discounts, penalty for	6014.114
Consolidation of banks, how effected	6014.94
Consolidate defined	6014.5
Corporate existence ceases when	6014.106
Definition of banks and trust companies	6014.4
Definition of words and terms	6014.5
Demand deposits defined	6014.5
to include what	6014.52
Deposits in joint names, survivorships	6014.49
Deposits, demand and time	6014.52
minors	6015.51
payment to foreign administrators	6014.104
penalty for receiving when insolvent	6014.69-6014.87
pledging property to secure prohibited	6014.112
receipt by insolvent banks prohibited	6014.70
trust deposits, payment of	6014.50
Directors, qualifications and term	6014.10
change in number, how effected	6014.16
procedure	6014.19
election of	6014.10
meetings	6014.12
oath of office	6014.10
ownership of stock required	6014.11
president, election of	6014.12

INDEX.

[References are to Sections]

BANKS AND BANKING (Continued)

Directors (Continued)	
secretary, election of.....	6014.12
vacancies in board how filled.....	6014.10
Dissolution and disincorporation,	
how effected	6014.20
Dividends, regulation of.....	6014.34
report to superintendent of	
banks	6014.64
Drafts, authority to issue.....	6014.74
Due diligence in forwarding	
items defined	6014.90
Effect of act on existing banks	
.....	6014.141
Effect partial invalidity act.....	6014.145
Election of directors.....	6014.10
Elections, how conducted and	
called	6014.23
estates of minors how repre-	
sented	6014.23
Embezzlement, penalty for.....	
.....	6014.113-6014.117
Employees to be bonded.....	6014.105
Employment persons convicted	
under bank act	6014.120
Examination of private banks.....	6014.84
Examinations, superintendent may	
make rules for.....	6014.91
at request of directors.....	6014.93
fees for	6014.73
special examinations defined.....	6014.92
Examination and suspension by	
superintendent of banks.....	6014.71
Examiner's fund	6014.73
False reports, penalty for.....	
.....	6014.40-6014.69
False statements and entries	
deemed felony	6014.67
False statements to obtain loans,	
penalty for	6014.118
Federal reserve, banks may join	
how	6014.28
First meeting, calling of.....	6014.9
Foreign administrators, payment	
deposits to	6014.104
Foreign corporations may engage	
in business how.....	6014.31
Forged or raised check, liability	
on payment by bank.....	6014.80
Fraud, penalties for.....	6014.40
Funds, state examiner's fund.....	6014.73
Holidays, transaction on not void	
.....	6014.115
Impairment of stock, assessment	
for	6014.68
Increase or diminution of stock,	
how effected	6014.14
conversion surplus into stock.....	6014.97
Injunction against doing business.....	6014.30
Insolvency defined	6014.88
Insolvent banks not to receive	
deposits	6014.70
penalty for	6014.70-6014.87
Insolvencies, public deposits not	
preferred	6079.1
Inspection of banks. See sub-	
title, Examinations	

BANKS AND BANKING (Continued)

Institutions to which act is ap-	
plicable	6014.2
Interest not to exceed lawful	
rates	6014.48
Investment companies included in	
act	6014.2
defined	6014.4
investment of capital, how gov-	
erned	6014.26
may deal in real estate how.....	6014.26
purpose for which may be	
formed	6014.4
Joint deposits, regulation of....	6014.49
Letters of credit, authority to	
issue	6014.74
Liability of stockholders.....	6014.21
waiver of prohibited.....	6014.42
Liability of bank for items for-	
warded	6014.89
Limitations on borrowing money	
.....	6014.110
certificates of deposit not to	
issue for	6014.111
Liquidation for failure to make	
good stock impairment.....	6014.68
Liquidating officer, powers of.....	6014.21
suits instituted by.....	6014.21
Liquidation of banks	
appointment of agent by super-	
intendent banks	6014.129
assets may be sold how.....	6014.127
by directors placing in hands	
of superintendent banks.....	6014.123
effect of posting notice.....	6014.124
claims, allowance and regula-	
tion of	6014.132
compensation of agents and	
attorneys	6014.130
court proceedings when and	
how instituted	6014.127
disposal of assets after payment	
claims	6014.138
grounds for closing.....	6014.121
funds in hands of superinten-	
dent, disposal of.....	6014.136
unclaimed funds, disposal of	
.....	6014.137
liquidating agent, appointment	
and salary	6014.129
liquidations now in process to	
continue	6014.139
notice to creditors to be pub-	
lished	6014.131
payment of claims.....	6014.133
order of payment.....	6014.134
partial payments	6014.135
penalty for closing with crim-	
inal intent	6014.122
powers of superintendent of	
banks	6014.127
recourse to aggrieved bank.....	6014.128
resumption of business after	
closing	6014.126
taking possession of bank by	
superintendent	6014.125

INDEX.

[References are to Sections]

BANKS AND BANKING (Continued)

Liquidation of banks (Continued)	
volunteer liquidation may proceed how	6014.139
liquidation by receivers to continue	6014.140
Loans, limitation on	6014.44
Loans to managing officers	6014.45
Losses, how charged off	6014.34
Meetings, calling first meeting ..	6014.9
Meetings of directors	6014.12
Merge defined	6014.5
Minor, deposits by	6014.51
Morris Plan Company, regulation of. See main title, Morris Plan Companies	6109.1-6109.11
Name, change of, how effected	6014.15-6014.17
Name of unincorporated bank, designation of	6014.82
National banks, reorganization as state banks	6014.79
Net earnings defined	6014.5
Number of persons necessary to incorporate	6014.3
Officers and employees, how chosen	6014.12
bonds of	6014.105
forbidden to certify checks when	6014.47
frauds by	6014.40
not to be interested in what ..	6014.43
removal of	6014.109
sale of securities to bank	6014.37
Overdrafts by officers, regulation of	6014.41
Overdue paper, regulation of ..	6014.102
Paid in capital defined	6014.5
Penalty for false report to examiner	6014.65-6014.69
closing bank with criminal intent	6014.122
concealment loans and discounts	6014.114
embezzlement	6014.117
false reports	6014.40-6014.69
failure to make report within five days	6014.66
false statements to obtain loans	6014.118
obtaining property by fraud ..	6014.40
overdrafts by officers	6014.41
receiving deposits when insolvent	6014.70-6014.87
unlawful hypothecation of assets	6014.113
violation of act by state examiner	6014.85
Place of business, change, how effected	6014.16
Pledge of property to secure loans	6014.99
Preferred stock, banks not to have	6014.8
Presentation of checks, time for	6014.81

BANKS AND BANKING (Continued)

President of directors, election of	6014.12
Private banks, amount of property required	6014.83
call reports	6014.86
knowledge obtained by superintendent confidential ..	6014.85
name of	6014.82
publication of reports	6014.86
subject to examination	6014.84
Profit and loss defined	6014.5
Profits, how calculated	6014.46
Public deposits not preferred in insolvency proceedings	6079.1
Purchase of obligations of bank by officers	6014.43
penalty	6014.43
Real estate, limitations on holding of	6014.24
banks may purchase, hold or convey when	6014.25
trust and investment companies may deal in	6014.26
Removal of officers and directors	6014.109
Repealing clause	6014.144
Reports	
banks to make to superintendent banks	6014.61
considered confidential ..	6014.65
declaration of dividend	6014.62
duty of examiner to call for ..	6014.64
penalty for failure to make ..	6014.66
penalty for false reports	6014.65-6014.69
private banks, reports by	6014.86
superintendent of banks to make to governor	6014.72
special reports to be made when	6014.63
Reserve banks, loans and discounts by	6014.53
Reserve agencies, designation of	6014.53
Reserve requirements	6014.53
reports on reserve required ..	6014.103
Rules and regulations, superintendent may make	6014.91
Safe deposit department, regulation of	6014.35
Sale of securities by officials to bank	6014.37
Savings banks included in act ..	6014.2
capital stock, amount of	6014.8
invested how	6014.24
defined	6014.4
real estate investments, limitations on	6014.24
Security for deposits not to be given by banks	6014.112
Secretary of board of directors, election of	6014.12
State banking department, creation of	6014.55

INDEX.

[References are to Sections]

BANKS AND BANKING (Con-

tinued)
 State banks
 converted to national banks
 how6014.75
 holding and dealing in real es-
 tate6014.25
 increase or decrease of capital
 6014.77
 surrender of state charter....6014.76
 vesting property in new bank..6014.78
 State examiner's fund, creation
 of6014.73
 amounts to be paid by banks
 and municipalities6014.73
 Stock. See sub-title, Capital Stock.
 Stockholder's liability6014.21
 list of to be kept.....6014.33
 right to make inspection of
 books6014.108
 suit against to collect defi-
 ciency6014.68
 transfer of shares six months
 before failure6014.21
 waiver of liability forbidden..6014.42
 Stop payment orders, time limit
 on6014.116
 Superintendent of banks
 appointment of6014.55
 approval or rejection applica-
 tion for change.....6014.18
 bond of6014.56
 bookkeeping, power to make
 rules concerning6014.100
 certificate of authority issued
 by6014.6
 rejection by final..... 6014.7
 definition of term..... 6014.5
 employees, power to engage..6014.57
 examination and supervision
 of banks by.....6014.71
 examiners power to appoint..6014.57
 expenses how paid6014.60
 information obtained by con-
 fidential6014.85
 penalty for violation of act.6014.85
 inspection of private banks by..6014.84
 interest in banks forbidden...6014.58
 liquidation of banks by. See
 sub-title, Liquidation of
 banks
 oath of office of examiners....6014.57
 qualification of6014.55
 reports and records.....6014.72
 report to of declaration of
 dividend6014.62
 reports, duty of banks to make
 to6014.61
 duty to call for.....6014.64
 penalty for false report....6014.65
 penalty for failure to make..6014.66
 reports confidential6014.65
 special reports, authority to
 require6014.63
 salary6014.59
 subpoenas, power to issue....6014.71
 trusts and trust companies, ex-
 amination by6014.98

BANKS AND BANKING (Con-

tinued)
 Superintendent of banks. (Con-
 tinued)
 unlawful for banks to conduct
 business without his per-
 mission6014.29
 penalty6014.29
 Surplus defined 6014.5
 Surplus and undivided profits,
 conversion into capital.....6014.97
 Taxation
 banks and bank stock..... 2067
 not to be levied on defunct
 banks6014.95
 Title of act 6014.1
 Time deposits defined 6014.5
 include what6014.52
 Transfers of stock how effected..6014.22
 Trust companies included in act
 6014.2
 examination by superintendent
 of banks6014.98
 investment of capital6014.26
 may be formed for what pur-
 poses 6014.4
 what property may be held by
 6014.26
 Trust deposits, regulation of...6014.50
 Undivided profits defined..... 6014.5
 Unincorporated banks, name, how
 designated6014.82
 financial condition, require-
 ments6014.83
 Unpaid interest or commissions
 not to be included in profits..6014.46
 Violation of act, penalty when
 not otherwise provided....6014.143
 Waiver of stockholder's liability
 prohibited6014.42
 Who may organize bank..... 6014.6

BARBED WIRE FENCES

Declared nuisance when..... 3376.1
 Disposal of fencing..... 3376.3
 Disposal proceeds of sale..... 3376.4
 Notice to repair..... 3376.2
 Removal by county commission-
 ers 3376.2

BEEES

Regulation of industry. See Agri-
 culture3566.1-3566.5

BENEVOLENT CORPORATIONS

See Religious, Social and Benevo-
 lent Corporations.....6453-6455

BEQUESTS

Cities may receive..... 5044.1
 Counties may receive..... 5044.1
 statutes applicable 5044.2

BIDS

For furnishing state supplies.... 293.3
 For furnishing departmental sup-
 plies 293.5

INDEX.

[References are to Sections]

BIDS (Continued)

For publishing report state treasurer 187.2

BILLARD AND POOL HALLS

Licensing by cities and towns.. 5039.1

BIRDS

See Fish and Game Laws

BLANKS

Attorney general to prepare forms 199.1
Form of assessment blanks and rolls for percentage assessments 2000.6
State board of equalization to prepare for inheritance tax matters10377.18

BLASTING

Regulation in coal mines..... 3524

BOATS

Boiler inspectors appointed inspectors of water craft..... 3859
inspection and license fees.... 3875

BOILERS

Inspection of, regulations..... 2726
Inspection of water craft..... 3859

BONDS

For index of bonds of officers and persons dealing with the state. See main title, Official Bonds
Amortization plan for state investments of school funds...1805.99
Amortization public bonds to be on amortization plan..... 4639.1
Cities may issue to fund debt... 5285
Cities may issue to procure natural gas 5039.3
Clerk to keep index criminal court bonds 4818.1
County bonds issued when. See Counties: Sub-title, Bonds 4614-4639.6
County commissioner may issue for what purposes..... 4465
County high school trustees may issue on failure of banks when1254.9-1254.16
Duty public officers to provide sinking funds 463.1
Fiscal agencies
bond to be given by..... 198.10
cancellation bonds or coupons.. 198.12
change of agency, how affected 198.16
designation for payment of bonds 198.9
liability officers failure to comply act 198.15
notice of place of payment.... 198.13

BONDS (Continued)

Fiscal agencies (Continued)

redemption money, how remitted 198.11
responsibility officers for funds 198.14
High school trustees may issue on failure banks when..... 1254.9-1254.16
Highway, county commissioners may issue 1622
Irrigation Districts. See Irrigation Districts7210-7231A
Issuance to purchase fire equipment in unincorporated towns5149-5150
Life insurance companies may invest in when..... 6269
Public bonds to be on amortization plan 4639.1
consideration of bids..... 4639.3
definition of terms..... 4639.2
notice of sale, contents of... 4639.4
copy to be sent register state lands 4639.5
School bonds. See Schools Public: Sub-title, Bonds..1224.1-1224.34
School trustees may issue to fund floating indebtedness when.. 1254.17-1254.24
School trustees may issue for moneys in failed banks, when 1254.1-1254.8
State land board must permit redemption when 1916
Unincorporated towns may issue when5149-5150
Validation certain bond issues... 540.3

BONUS

Soldier bonus act omitted from supplement 5654.1

BOOKS

Examination by state examiner.. 210
Third class school districts, regulation of1019.1-1019.4

BOUNDARIES

Counties. See Counties
Land, marking when necessary to maintain action for trespassing stock 3382

BOUNTIES

Affidavit, form of 3407.3
penalty for falsifying..... 3407.3
Bounty fund, creation of..... 2081
form of petition for levy..... 2083
levy for2081-3407.10
time of payment..... 2081.1
Bounty inspectors 2083
Claimant to exhibit skins..... 3407.2
Claims, form and affidavit..... 3407.3
County clerk to keep record of claims 3407.3
to report to livestock commission 3407.3

INDEX.

[References are to Sections]

BOUNTIES (Continued)

Coyotes, bounties on.....	3407.1
Delivery of claims to board examiners	3407.6
Filing claims with livestock commission	3407.4
Forgery, penalty for.....	3407.9
Fraudulent claims, penalty for..	3407.11
Indorsement and allowance claims by examiners	3407.7
Investigation and indorsement of claims	3407.5
disapproval, procedure	3407.5
Mountain lions, bounty for.....	3407.1
Perjury, penalty for.....	3407.9
Portion fish and game license funds transferred to pay....	3685
Sheriffs to act as bounty inspectors	3407.3
Surplus funds, disposal of.....	3407.8
Tax levy for bounty fund.....	3407.10
Wild animals defined.....	3417.1
livestock commission to supervise destruction	3417.2
skins, disposal of.....	3417.3
Wolves, bounty on.....	3407.1

BOXES

Apple boxes. See Apples.....4268-4272

BOXING

See Athletic Commission....4551-4562½

BRANDS

Registration by dairymen..... 2629

BRIDGES

County and district defined.....	1652
Establishment by county commissioners	4465

BUDGET

Rural school districts..... 1044

BUILDING AND LOAN ASSOCIATIONS

Agents, employment and license	6355.17
revocation of license.....	6355.17
Annual statement	6355.21
form and filing.....	6355.22
Articles of incorporation, contents	6355.2
amendment of	6355.12
certificate as evidence corporate existence	6355.4
certified copy as evidence....	6355.3
Bonds of officers, agents and employees	6355.16
Borrowing money, regulation of..	6355.12
By-laws, adoption and contents..	6355.5
Capital stock defined.....	6355.6
amount to be subscribed.....	6355.6
joint ownership of.....	6355.42
lost shares, procedure to transfer	6355.15

BUILDING AND LOAN ASSOCIATIONS (Continued)

Capital stock defined (Continued)	
minors may hold.....	6355.44
regulation of issuance.....	6355.12
transfers of, how regulated..	
trusts	6355.14-6355.15
trusting	6355.43
Certificate of approval, issuance by superintendent of banks..	6355.6
Certificate of incorporation, issuance of	6355.6
Checking accounts and deposits, not to receive.....	6355.46
Compliance with act required...	6355.34
Deposits, receipt of prohibited..	6355.46
Directors, number and duties....	6355.7
meetings	6355.9
removal from office when and how	6355.8
Dividends, regulation of.....	6355.19
Effect partial invalidity act....	6355.51
Expenses how paid	6355.19
Fees of secretary of state, laws applicable to.....	6355.49
Fees paid to treasury for examiner's fund	6355.27
Foreign associations, requirements of	6355.29
consent of agent.....	6355.30
contract void when.....	6355.31
papers to be filed by.....	6355.29
shares of stock subject to attachment	6355.32
Fraud by officers, penalty for..	6355.37
Fund for contingent losses.....	6355.18
Funds, regulation of investment	6355.12
Insolvency or impairment, procedure on	6355.48
action in court.....	6355.48
Laws of other states, reciprocal provisions	6355.33
License of agents	6355.17
Liquidation, voluntary, procedure	6355.47
Loans, regulation of.....	6355.12
limitation on	6355.41
Losses how paid.....	6355.18-6355.19
Meetings of stockholders and directors	6355.9
notice of	6355.10
proxies	6355.11
Minors, stock of how regulated..	6355.44
Name, regulation of.....	6355.2
Officers, directors and employees, removal of	6355.26
frauds by a felony.....	6355.37
purchase of assets by prohibited	6355.39
purchase of obligations by prohibited	6355.38
Penalties for violation of act...	6355.35
Powers of generally.....	6355.12
Profits how calculated.....	6355.40
Proxies, regulation of.....	6355.11
Purposes for which formed.....	6355.1

INDEX.

[References are to Sections]

BUILDING AND LOAN ASSOCIATIONS (Continued)

Real estate, regulation of holding	6355.12
Reciprocal provisions as to laws of other states.....	6355.33
Removal of officers and employees	6355.26
Repealing clause, exceptions.....	6355.50
Reports to superintendent of banks	6355.25
reports confidential	6355.45
Scope of act.....	6355.28
State examiner's fund, contributions to	6014.73
Stock. See sub-title, Capital Stock	
Stockholders defined	6355.13
Superintendent of banks to examine	6355.23
fees for examination.....	6255.23
powers concerning	6355.24
reports to, duty to make.....	6355.25
reports by to governor.....	6355.36
Taxation of	6355.20
Trust holding of shares permitted	6355.43
Voluntary liquidation, procedure.....	6355.47
Withdrawal of stock how regulated	6355.12

BUILDINGS

State buildings and improvements	
bids and certified check.....	259.3
board of examiners to advertise for bids when.....	259.1
contents of advertisement.....	259.2
contracts how let.....	259.1
contracts how awarded.....	259.4
cost plus plan prohibited.....	259.5
proviso	259.6

BULLS

Regulation of running at large on highways or national forests	3403
Unlawful to run at large in herd district	3385

BURNING PERMITS

See Forester, State.....	2778.1-2778.8
--------------------------	---------------

BUTCHERS

Regulation inspection hides and meat. See Livestock.....	3350.7-3350.14
--	----------------

BUTTE

See City and County of Butte	5520.121-5520.252
------------------------------------	-------------------

BUTTER

See, also, Dairying	
Defined	3568
renovated butter defined.....	3568
Maker's name to appear on package	3571
Standard measure for.....	3571

BUTTER (Continued)

Use of word on certain products prohibited	2622
--	------

CAPITOL

Erection monument on grounds authorized	319.9
---	-------

CARBON COUNTY

Establishment line with Yellow-stone	4358.1-4358.2
--	---------------

CATTLE

See Livestock	
---------------	--

CEMENT

License tax on producers and dealers. See Taxation....	2357-2368
--	-----------

CEMETERIES

Gifts and donations, power to receive	5044.1
---	--------

CEMETERY ASSOCIATIONS

Trustees of funds, procedure to appoint	6489
appointed by district court when	6494
powers of	6489
term of office	6490
vacancies how filled.....	6492

CENSUS

County superintendent, duties in connection with	971
penalty for failure to perform	971
School census, how taken and reported	1051
compensation of clerk.....	1051
county superintendent to examine	1051.1
Superintendent public instruction to check for duplicates.....	971.1

CERTIFICATES

Teachers. See Schools Public:	
Sub-title, Examination of Teachers	1088-1104

CERTIFICATES OF REGISTRATION

Automobiles. See Motor Vehicles: Sub-title, Registration	1763.5-1763.12
--	----------------

CERTIFICATES OF TITLE

Automobiles. See Motor Vehicles: Sub-title, Certificates of Title	1763.1-1763.4
---	---------------

CHALLENGES

Number allowed state in criminal cases	11956
To voters at special school elections	1223

INDEX.

[References are to Sections]

CHAPLAIN

Soldiers' home, duties and salary 1546

CHATTEL MORTGAGES

See Mortgages.....8273-8291

CHECKS

Time limit for presentation of..
..... 6014.81-8593.1

CHEESE

See, also, Dairying
Defined 3568
Standard measure for..... 3571

CHEESE FACTORIES

License of..... 3569
Reports required to be made by
.....3569-3569.1

CHEMIST, STATE

See State Chemist

CHILD AND ANIMAL PROTECTION, BUREAU OF

Authorized to administer federal
appropriations for Indians...2460.2
budgets, authority to submit.. 2460.3

CHILDREN

See, also, Mothers' Pension Act
..... 10482
Juvenile delinquents, procedure
on arrest of..... 12280
May be sent to other school districts,
when 1010

CHIROPODY

See Podiatry3154.1-3154.10

CITIES AND TOWNS

Additions to first class city, how
made 4978
to second and third class, how
made 4978
Animals, contents of notice of
impounding 5176
Annual appropriation ordinance. 5218
Annual tax levy..... 5216
Awarding of contracts, regulation
of 5070
Bequests, power to receive..... 5044.1
Billiard and pool halls, licensing
of 5039.1
Boundaries, how altered..... 4979.1
Bonds, authority to issue for
natural gas 5039.3
Bonds, authority to issue for
funding debt 5285
Bond sinking fund how invested 4622.1
Butte, city and county of. See
main title, City and County
of Butte.....5520.121-5520.252
City and county government,
how merged. See main title,

CITIES AND TOWNS (Continued)

City and county government
(Continued)
Merger of City and County
Government5520.1-5520.120
City and town councils, powers
generally 5039
powers concerning 5039
aircraft landings 5039
amusement enterprises 5039
arrests 5039
auctioneers 5039
automobile licenses 5039
basement entrances 5039
boards of health..... 5039
blacksmith-shops 5039
boilers 5039
bonds, issuance of..... 5039
borrowing money 5039
boxing matches 5039
breweries 5039
building construction 5039
buildings 5039
cabs and carriages..... 5039
cemeteries 5039
census 5039
cisterns and sewers..... 5039
city printing 5039
coasting 5039
concealed weapons 5039
condemnation of property... 5039
construction public works... 5039
contracting indebtedness 5039
chimneys and flues..... 5039
cruelty to animals 5039
dance-houses 5039
dangerous buildings 5039
diseases 5039
distilleries 5039
disturbance of peace..... 5039
dogs 5039
eminent domain 5039
explosives 5039
factories 5039
fences 5039
fines and penalties..... 5039
firearms 5039
fireworks 5039
flagman at street crossings... 5039
fire department 5039
firecrackers 5039
fire-escapes 5039
fire limits 5039
franchises 5039
fraudulent devices 5039
grant of right of way..... 5039
hats and bonnets, wearing in
public places 5039
horse-racing 5039
impounding livestock 5039
improvement districts 5039
inspection of lumber and pro-
duce 5039
encumbering property 5039
irrigation ditches and works.. 5039
isolation hospitals 5039
jails 5039

INDEX.

[References are to Sections]

CITIES AND TOWNS (Continued)

City and town councils (Continued)	
junk-shops	5039
leasing of city property.....	5039
livery-stables	5039
licenses	5039
lighting streets	5039
markets and market houses...	5039
mills	5039
numbering of houses.....	5039
noxious weeds	5039
nuisances	5039
obscenity	5039
opium, sale of	5039
ordinances, power to enact....	5039
party-walls	5039
passage of ordinances.....	5039
payment of debts	5039
pawnshops	5039
peddlers	5039
pesthouses	5039
poll tax	5039
planing-mills	5039
poles and wires.....	5039
poisons	5039
prize-fights	5039
public grounds	5039
railroad tracks and crossings..	5039
regulation of speed.....	5039
riding on sidewalks.....	5039
right of way for railroads....	5039
running at large of cattle....	5039
sale of property.....	5039
sanitation	5039
sewerage system	5039
sidewalks	5039
signs and awnings.....	5039
skating and coasting.....	5039
slaughter-houses	5039
smallpox	5039
soap factories	5039
streets and sprinkling.....	5039
street grades	5039
street railroads	5039
street sprinkling	5039
tanneries	5039
taxation	5039
theaters	5039
toy pistols	5039
traffic regulations	5039
tree planting and protection..	5039
use of county jails.....	5039
use of city streets.....	5039
vagrancy	5039
vehicles licensing of	5039
water and watercourses.....	5039
water supply	5039
waterworks bonds	5039
weights and measures.....	5039
weeds	5039
workhouses	5039
Clerk to render financial statement	5033.1

Commission manager plan of government

adoption of plan, mayor to send certificate	5404
---	------

CITIES AND TOWNS (Continued)

Commission manager plan of government (Continued)	
appropriation ordinance	5503
bond of commissioners.....	5443
budget, submission of.....	5502
civil service board, appointment and organization....	5471
salaries power concerning..	5507
city manager, control of department of public safety	5465
salary how fixed.....	5507
commissioners, qualification and terms	5411
commissioners, certain acts by prohibited	5413
election when held.....	5411
meetings	5448
oath and bond	5443
preliminary authority	5413
qualifications of	5413
department of finance	
creation and duties.....	5466
director of finance, duties..	5466
custodian of moneys.....	5466
purchases how made by...	5466
warrants how and when issued	5466
department of public safety creation and duties.....	5465
elections, proclamation and calling	5405
ballot, form and voting....	5415
qualifications of voters....	5415
estimate of expenses, preparation of	5502
exception to repealing clause..	5516
expense accounts of candidates, filing	5418
fire chief, powers of.....	5465
fiscal year	5502
laws continued in force.....	5515
mayor, duties, vacancies.....	5444
procedure on tie vote.....	5444
meetings of commissioners, regulation of	5448
ordinances, form and passage.	5449
plat of lots, survey and filing	5487
police department, creation and regulation	5465
police judge, appointment....	5470
preliminary authority of commissioners	5442
primary ballot, form of.....	5415
prohibition certain acts by commissioners	5413
purchases how made	5466
salaries city manager and employees	5507
Contracts, regulation of award..	5070
election when necessary.....	5070
Deposit of funds, regulation of	4767
Donations, power to receive....	5044.1
Election must be had on letting contract when	5070
Exclusion of territory from....	4979.1
adoption of resolution.....	4979.2
filing of resolution and map..	4979.3

INDEX.

[References are to Sections]

CITIES AND TOWNS (Continued)

Exclusion of territory from (Continued)	
liability excluded territory for debts	4979.4
petition for exclusion.....	4979.4
taxing jurisdiction retained....	4979.5
Factories, cities may furnish water for when	5039.2
Financial statement, clerk to render	5033.1
Fire departments	
auditor to pay cities 50% of licenses	5127
disability and pension fund, creation of	5117
how used	5135
effect partial invalidity of act	5135.1
fire department relief associa- tions	
examination of books.....	5130
organization of	5129
payment of money to.....	5131
pension to retired firemen..	5132
report of secretary and treas- urer	5130
service pension, payment of use of disability fund.....	5135
widows' and orphans' pen- sion	5134
fire department relief associa- tion disability funds	
benefits allowed	5123
board of trustees	5120
duties	5121
general management of	5121
penalty for embezzlement of funds	5124
source of disability fund....	5118
tax levy for disability fund	5119
use of disability fund.....	5135
warrants, payment of.....	5128
hours of work.....	5138
licenses, 50% to be paid city..	5127
levy for volunteer department authorized	5116.1
pension fund, creation of.....	5117
what benefits allowed.....	5123
pension when paid to retired firemen	5132
pension to widows and orphans	5134
report of insurance companies	5126
service pension	5133
state treasurer to pay war- rants when	5128
volunteer department, tax levy for	5116.1
Fire protection in unincorporated towns	
county commissioners may establish fire limits....	5148A
directors of fire districts....	5149
election on issuance of bonds..	5150
qualifications of voters.....	5150
issuance of bonds.....	5149
Fiscal year	5217
Funding of indebtedness by....	5285

CITIES AND TOWNS (Continued)

Gifts, authority to receive.....	5044.1
statutes applicable.....	5044.2
Grant of right of way to for pipe lines	4465.1
Improvement district. See sub- title, Special Improvement Districts	5228-5276
Licensing of billiard and pool halls	5039.1
Licensing of soft-drink estab- lishments	5039.1
Lighting streets, improvement district for	5259
Merger of city and county gov- ernment. See main title, Merger of City and County Government	5520.1-5520.120
Natural gas, issuance of bonds to procure	5039.3
limitation on indebtedness....	5039.3
Negligence, nonliability for when	5086.1
Notice of impounding animals..	5176
Ordinances, annual appropria- tion	5218
Parks and playgrounds, incur- ring debt for.....	5159
Pension fund for fire depart- ments	5117
Platting of additions to, pro- cedure	4978
Police department	
active and eligible list, how defined	5101
age qualifications policemen..	5096.1
appointments to, how made...	5097
probationary period.....	5097
charges against policemen, how presented	5100
trial of	5100
cities, how admitted to bene- fits of act	5096.8
deductions from monthly pay.	5096.9
disposal of money withheld from salaries	5096.10
gifts	5096.10
eligible list, determination of	5101
examination of applicants...	5099
penalty for false statements	5099
officers must speak and write English	5106
period of service of members..	5096.2
police commission, appointment	5098
compensation	5098
examination of applicants..	5099
police reserve	5096.2
disability, eligibility	5096.4
presentation and trial of charges against	5100
qualification of members.....	5106
retirement list, emergency calls	5096.3
retirement on half pay when..	5106
salary and expenses during ill- ness	5096.6
salary of policemen on reserve list	5096.5
suspensions	5100

INDEX.

[References are to Sections]

CITIES AND TOWNS (Continued)

Police department (Continued)	
tax levy to pay for salaries..	5096.7
terms of members of.....	5097
Powers of city and town councils	5039
Snow and ice, nonliability for negligence, when	5086.1
Special improvement districts (other than lighting)	
bonds or warrants issued to pay for improvements....	5250
certification and collection of special assessments	5251
certification delinquent taxes to county treasurer.....	5215.1
collection of special assessments, how made.....	5251
delinquent assessments	5215.1
cost of improvements in extended district	5228
lighting streets, creation district for	5259
payment for improvements, how made	5250
payment for improvements, how assessed	5238
what property excepted....	5238
property owners may do work when	5238
protests against proposed work	5229
street sprinkling, how done...	5272
cost, how assessed	5276
unplatted lands included in district when	5238.1
Special improvement districts for street lighting	
assessment of cost how.....	5260
contract for maintenance....	5266
creation of.....	5259
maintenance fund	5266
petition for discontinuance...	5269
posts, size and style of.....	5261
procedure on passage resolution intention.....	5261
proportion of cost borne by abutting property	5260
resolution assessing cost....	5265
resolution of intention.....	5261
United States lands excepted.	5271
Soft-drink establishments, licensing of.....	5039.1
State examiner's fund, contributions to.....	6014.73
Street lighting. See sub-title, Special Improvement Districts for Street Lighting	
Street sprinkling, how done...	5272
assessment of cost.....	5276
Taxes, amount of for general municipal purposes.....	5194
annual tax levy.....	5216
certification delinquent improvement district taxes..	5215.1
in cities which have exceeded constitutional limit of indebtedness	5201

CITIES AND TOWNS (Continued)

Unincorporated towns, fire protection in	5148A-5150
Water may be furnished to outside industries when.....	5039.2
Water, issuance bonds to procure	5039

CITY CLERK

See Cities and Towns.....	5033.1
---------------------------	--------

CITY AND COUNTY GOVERNMENT, MERGER OF

See Merger of City and County Government	5520.1-5520.120
--	-----------------

CITIZENS

Who deemed for purposes fish and game laws.....	3685
---	------

CITY AND COUNTY OF BUTTE

Act applies to what territory..	5520.121
Administrative service, regulation of.....	5520.148
Advisory board, appointment of	5520.158
Affidavit on initiative and other petitions	5520.145
Assessor, election, duties and salary	5520.168
duties as to tax maps.....	5520.169
duties as to special assessments	5520.170
Assistants, employment of..	5520.155
Amendment of petitions.....	5520.147
Appointments, restrictions concerning	5520.151
Appraisal property on adoption act	5520.247
Appropriation ordinance.....	5520.172
accounts of to be kept.....	5520.182
for sinking fund.....	5520.198
what to be credited to.....	5520.186
Attorney, appointment, salary and duties.....	5520.160
Audit and account, division of	5520.163
audit of books by.....	5520.164
Bonds, issuance to fund obligations	5520.197
Bonds required of officers.....	5520.241
Borrowing money, regulation of	5520.197
Budget, form and contents...	5520.171
passage appropriation ordinance	5520.172
Citizens' advisory board, appointment of.....	5520.158
City and county attorney, appointment and duties.....	5520.160
Claims, how paid.....	5520.183
investigation of.....	5520.184
Commission, qualifications and term	5520.123
absence vacates seat when..	5520.129
board of equalization.....	5520.240
bond of.....	5520.241
clerk of	5520.127

INDEX.

[References are to Sections]

CITY AND COUNTY OF BUTTE

(Continued)

Commission (Continued)

county board of health.....	5520.206
compensation	5520.129
expulsion of members when.....	5520.125
forfeiture of pay for absence.....	5520.129
investigation of departments by	5520.159
meetings, how called and held	5520.124
mileage of.....	5520.129
not to hold other offices.....	5520.239
powers	5520.125
president, election and powers	5520.126
quorum	5520.128
recall of. See sub-title, Recall	
restriction on.....	5520.239
salary schedule established by	5520.157
tax levy made by.....	5520.173
transition of government regu- lation on.....	5520.248
vacancies in, how filled.....	5520.123
voting	5520.128
Compensation of commission.....	5520.129
Compensation of officers and em- ployees	5520.157
Continuation existing districts.....	5520.178
Contracts, alteration of.....	5520.201
awarded how.....	5520.200
certification by director of finance	5520.185
when void.....	5520.187
County board of health.....	5520.206
Debt, limitation on.....	5520.196
Departments, enumeration of.....	5520.154
control by commission.....	5520.154
employment of assistants.....	5520.155
Department of health.....	5520.205
Depositories, designation of.....	5520.188
bond of.....	5520.188
new bond when required.....	5520.190
deposit of funds in.....	5520.192
deposit of securities by.....	5520.189
continuation of securities.....	5520.191
interest on deposits.....	5520.189
interest on daily balances.....	5520.193
liability of treasurer.....	5520.195
Director of finance, duties gener- ally	5520.127
certification of contracts by.....	5520.185
pay-roll, duty to examine.....	5520.184
purchasing agent.....	5520.166
specific powers and duties.....	5520.161
statement of revenues, duty to make	5520.162
Director of public works, powers and duties.....	5520.203
Division of audit and account	5520.163-5520.164
Division of treasury.....	5520.165
Duties of officers to commence when	5520.246
Effect of adoption of act.....	5520.121
Effect partial invalidity act.....	5520.252

CITY AND COUNTY OF BUTTE

(Continued)

Election how held on adoption of act.....	5520.216
Election on adoption of act.....	5520.249
ballot, form of.....	5520.250
effect of election.....	5520.251
petition for.....	5520.249
Elections, contents of ballot, tie vote	5520.226
Elections, municipal primary. See sub-title, Primary Election	
Electoral board, conduct of elec- tions by.....	5520.217
canvass of returns.....	5520.217
Employees, list to be kept by di- rector of finance.....	5520.156
payment salary when with- held	5520.156
Existing contracts continued.....	5520.244
Existing districts continued.....	5520.178
Existing ordinances continued.....	5520.245
Financial procedure, regulation of	5520.171
Fire department.....	5520.207
firemen's disability fund.....	5520.208
Fiscal year.....	5520.171
Franchises, regulation of grant of	5520.133
Funding obligations authorized	5520.197
General regulations affecting transfers on adoption of act	5520.247
Health department.....	5520.205
county board of health.....	5520.206
Interest on bank deposits.....	5520.189
Interest on daily balances.....	5520.193
Initiative, submission of ordi- nances by.....	5520.135
affidavit to accompany peti- tion	5520.145
amendment of petition.....	5520.146
assembling, certification and filing	5520.146
certification and submission.....	5520.136
signatures on petitions.....	5520.145
submission of amended ordi- nance	5520.139
submission of repealing ordi- nance	5520.140
submission to electors.....	5520.137
time for submission.....	5520.138
Investigation of departments by commission or manager.....	5520.159
Investments of sinking funds, how made.....	5520.199
Limitation on indebtedness.....	5520.196
Manager, appointment and re- moval	5520.148
appointments by.....	5520.149
bond	5520.241
citizens' advisory board ap- pointed by.....	5520.158
duties of.....	5520.152
duty to attend meetings.....	5520.153
powers restrictions on.....	5520.151

INDEX.

[References are to Sections]

CITY AND COUNTY OF BUTTE

(Continued)

Manager (Continued)	
procedure for removal or sus-	
pension	5520.150
responsibility of	5520.149
salary	5520.148
Meetings of commission how	
called and held	5520.124
Mileage of commission	5520.129
Municipality a body politic	5520.122
Money how drawn from treasury	
.....	5520.181
Nominations at primaries, how	
made	5520.219-5520.221
Notice of election, publication	
of	5520.225
Officers, powers before and after	
adoption act	5520.216
solicitation forbidden	5520.236
duties to commence when	5520.246
interest in contracts forbidden	
.....	5520.243
oath of	5520.242
other restriction on	5520.237
penalties for violation	5520.238
special perquisites forbidden	
.....	5520.235
Ordinances, regulation of	5520.130
appropriation ordinance	5520.172
effective date of	5520.133
emergency measures	5520.133
enacting clause	5520.130
initiative proposal of	5520.135
submission to electors	5520.137
submission of amended ordi-	
nance	5520.139
submission of repealing or-	
dinance	5520.140
publication of	5520.131
recording and authentication	
of	5520.134
referendum on when and how	
had	5520.141
revised how	5520.132
vote required for passage	5520.133
Pay-rolls, examination by di-	
rector finance	5520.184
Penalties for violation of act	5520.238
Police court and judge	5520.210
Police department, powers and	
duties	5520.202
Political solicitation by officers	
forbidden	5520.236
Powers of commission	5520.125
Powers of director of finance	5520.161
Powers of municipality	5520.122
President of commission, election	
and powers	5520.126
metropolitan police act applica-	
ble	5520.202
Primary municipal elections	
acceptance by nominees	5520.221
contents of ballot	5520.226
date of holding	5520.218
filing of papers	5520.221

CITY AND COUNTY OF BUTTE

(Continued)

Primary municipal elections	
(Continued)	
notice of election, publication	
of	5520.225
nominations by petition	5520.219
form of petition	5520.220
order of names, how deter-	
mined	5520.223
party designation forbidden	
.....	5520.222
polls when open	5520.218
tie vote, procedure on	5520.226
voter may write names on bal-	
lot	5520.224
who declared elected	5520.226
Public works, department of,	
powers of director	5520.203
Public works, how constructed	
.....	5520.211
Purchasing agent, duties of	5520.166
supplies how purchased	5520.167
Quorum of commission	5520.128
Recall of commission	
ballot, form of	5520.231
effect of election	5520.232
election on recall	5520.229
petitions, return and filing	5520.228
limitations as to time of fil-	
ing	5520.234
procedure for	5520.227
resignation pending recall, ef-	
fect of	5520.233
submission of petition	5520.229
two or more recalls, how sub-	
mitted	5520.230
voting machines use prohibited	
.....	5520.231
Recall petitions, signatures on	
.....	5520.145
assembling and filing	5520.146
Recording of ordinances	5520.134
Referendum on ordinances, when	
and how had	5520.141
amendment of	5520.147
assembling and filing petitions	
.....	5520.146
ballot title, form of	5520.143
certification of petitions for	
.....	5520.142
preliminary acts	5520.144
reconsideration by commission	
.....	5520.142
signatures on petition	5520.145
Removal of manager, procedure	
for	5520.150
Salary of assessor	5520.168
Salary of commissioner	5520.129
Salary of city and county attor-	
ney	5520.160
Salaries, payment when withheld	
.....	5520.156
Salaries when recovered on bond	
of officer	5520.156
Salary of manager	5520.148

INDEX. [References are to Sections]

CITY AND COUNTY OF BUTTE

(Continued)

Salaries to be fixed by ordinance	5520.157
Scope of act.....	5520.121
Sheriff, powers, duties and salary	5520.202
Signatures on initiative and other petitions	5520.145
Sinking fund, appropriation for	5520.198
Sinking fund board, appointment and powers.....	5520.199
Special assessments, duty of assessor	5520.170
limitation tax levy for.....	5520.175
Special improvement districts, procedure to create.....	5520.212
general laws applicable to.....	5520.215
notice to property owners.....	5520.214
report on creation of.....	5520.213
Submission of act to electors.....	5520.249
Superintendent of schools.....	5520.209
Surveyor, duties, how performed	5520.204
Taxation	
collection of taxes, how made	5520.177
levy for existing districts.....	5520.178
levy made by commission.....	5520.173
limitation on	5520.174
limitation on in special districts	5520.175
limitation of general tax laws	5520.179
tax limits, preparation of.....	5520.176
tax maps, preparation by assessor	5520.169
taxes, how levied after adoption of act.....	5520.247
Transfer of balances of appropriations	5520.180
Transfers on adoption of act, regulation of.....	5520.247
Treasury division of.....	5520.165
liability of treasurer.....	5520.195
money how drawn from treasury	5520.181
payments made by check.....	5520.194
treasurer to make monthly statements	5520.193
Transition of government, regulation of	5520.248
Voting machines, use on recall elections prohibited.....	5520.231

CLAIMS

Against estates, time for suit on	10178
---	-------

CLASSIFICATION

State lands.....	1805.16
------------------	---------

CLASSIFICATION LAW

Percentage basis, how determined for taxation.....	2000.3
board of equalization to fix..	2000.4

CLASSIFICATION LAW (Continued)

Percentage basis (Continued)	
county clerk to apply percentages	2000.5

CLAY

Leases of state lands for.....	1805.52-1805.55
--------------------------------	-----------------

CLERGYMEN

Cannot be examined as witnesses when	10536
--	-------

CLERK DISTRICT COURT

Index book for criminal bonds kept by.....	4818.1
Transcribing records on creation new county	4402

CLERK OF SCHOOL DISTRICT

See, also, Schools Public	
Census, duties in connection with compensation for taking.....	1051

CLERKSHIPS

Consolidated boards.....	123.1
--------------------------	-------

CLOTHES

Factory for manufacture to be installed at state prison	12447.1-12447.11
---	------------------

COAL DEALERS

Accurate invoice coal required..	3546.1
duty of dealers.....	3546.2
Enforcement of act, duty of officers	3546.6
Full weight and quality coal to be given.....	3546.3
Invoices, copies to be kept for inspection	3546.4
Penalty for violation of act....	3546.5

COAL LANDS

Leases of. See Department of State Lands and Investments	1805.38-1805.47
--	-----------------

COAL MINING

Blasting regulations.....	3524
Cross-cuts, regulation of construction	3504
Ventilation of mines, regulation of.....	3504

CODES

See Revised Codes of 1921	5546.1-5546.3
---------------------------------	---------------

COMMISSION, FISH AND GAME

See Fish and Game Laws

COMMISSION-MANAGER PLAN OF GOVERNMENT

See Cities and Towns.....	5404-5516
---------------------------	-----------

INDEX.

[References are to Sections]

COMMISSIONER OF AGRICULTURE

See Agriculture, Department of

COMMISSIONER OF INSURANCE

May suspend license of insurance agents..... 6124
 general powers concerning.... 6124
 Salary of deputy..... 440.5
 State auditor ex officio..... 162
 powers and salary..... 162

COMMISSIONER OF STATE LANDS

Appointment, term and bond... 1805.5

COMMITTEEMEN

County and city, how elected.. 662
 powers and term..... 662
 National committeeman and woman, how elected..... 663
 powers and term..... 663

COMMITMENTS

Attorney general to draw blanks 199.1

COMMON SCHOOL EQUALIZATION BOARD

Creation 1201.2
 Distribution of funds by..... 1201.3
 Equalization of program by.... 1201.3
 Funds, how distributed by..... 1201.4

COMPENSATION

See Workmen's Compensation Act2837-2990A

CONDITIONAL SALES CONTRACTS

Filing of 7594
 Railroad equipment and rolling stock 6537

CONGRESSIONAL ACTS

Acceptance for experiment stations 893.1
 Who may receive funds..... 893.2

CONSERVATION

Oil and gas. See Oil and Gas3547.1-3547.4

CONSOLIDATED BOARDS

Clerkships consolidated 123.1

CONSTITUTION

Amendments, how placed on ballot 103
 Amendments, how published... 537.1
 cost, how paid..... 537.1

CONTEMPTS

Punishment witnesses for contempt summons of state board of equalization.....10377.25

CONTRACTS

For state buildings and improvements. See Buildings...259.1-259.6
 For state printing and supplies 293.6
 Limitations on letting highway contracts 1622
 Title reservation contracts, filing of 7594

CONDEMNATION PROCEEDINGS

See Eminent Domain..... 9947

CONSENT

To sale of property by guardian 10434

CONSPIRACY

Unfair discrimination in purchase of commodities..... 10904

CONVENTIONS

To nominate presidential electors and delegates to national conventions673.1-673.8

CO-OPERATIVE ASSOCIATIONS

May handle seeds, how..... 3592.9

CO-OPERATIVE MARKETING

Annual report of associations... 6445
 Marketing agreements, recording of 6449.1
 assignment of security..... 6449.6
 acknowledgment and recording 6449.6
 how executed and filed..... 6449.2
 index to be kept..... 6449.7
 record to convey full title when 6449.5
 where filed 6449.3
 constructive notice of record 6449.4

CORPORATIONS

Amendment articles of incorporation, how 5918
 Annual statement of..... 6003
 verification and filing..... 6003
 Cemetery associations. See Cemetery Associations6489-6494
 Continuous succession when authorized 5916.1
 certificate to be filed with county clerk 5916.2
 Dissolution by district court, application for and hearing on 9927
 Extension term of existence, how effected 5926
 Foreign Corporations
 fees for filing articles..... 145.1
 additional fees, when..... 145.4
 penalty for failure to pay... 145.6
 report of capital stock..... 145.2
 statement may be demanded. 145.3
 stock of no par value, how estimated 145.5
 stock, how computed..... 145.3
 what corporations must pay fees 145.7

INDEX.

[References are to Sections]

CORPORATIONS (Continued)

Insurance on lives of officers, power to change.....	5942.1
License tax. See Taxation..	2299-2303.1
Life insurance companies. See Life Insurance Companies	6258.1-6280
Mortgages, how executed and where filed	8273
Officers, corporations may change insurance on lives of how...	5942.1
Redemption from sales of prop- erty, how made.....	9444
Religious, social and benevolent. See Religious, Social and Be- nevolent Corporations ...	6453-6455

COSTS

Disposal of	12433
statement to be filed.....	12433
In condemnation proceedings...	9947
In mandamus proceedings.....	9858
Lien foreclosure, what costs al- lowed on	9799
foreclosure threshermen's liens	9799.1
State, municipalities and officers exempt from	9810

COUNTIES

Bonds	
amortization plan, bonds to be issued on	4639.1
bond fund, creation and use..	4622
consideration of bids.....	4639.3
definition of terms.....	4639.2
notice of sale, contents of....	4639.4
copy to be sent register state land	4639.5
procedure if commissioners fail to make levy	4622
refunding bonds, regulation of issuance	4614
sinking fund, how invested...	4622.1
tax levy to pay.....	4622
Boundaries	
Fergus county	4318
Judith Basin	4327
Lake	4327.1
Petroleum	4337.1
Yellowstone and Carbon, line between	4358.1
Contingent fund, disposal of sur- plus	4633
Deposit of public moneys, regu- lation of	4767
Election county commissioners on creation new county....	4396.2
Election state senator on crea- tion new county	4396.1
Fairs, appointment of commis- sion	4545
appropriation and tax levy for	4549
Funds, how and where deposited	4767
Gifts and donations, power to receive	5044.1

COUNTIES (Continued)

Health officer, deputies may be appointed when	4527
Jails, receipt of federal prisoners in	12472.1-12472.2
Librarian, appointment and qual- ifications	4565
May redeem bonds held by state when	1916
Merger of city and county gov- ernment. See Merger of City and County Govern- ment	5520.1-5520.120
Officers not to receive fees for own use	4864
Petty cash fund, creation of....	4632
Poor, contract for medicine and attendance	4527
Purchase of county warrants, when authorized	4639.6
Records to be transferred on creation new county	4402
files, transfer of.....	4402
Salary county officers, how paid	4868
power of county commissioners to fix	4465
State examiner's fund, contribu- tions to	6014.73
Transfer pending actions on creation new county	4403
Validation certain bond issues..	540.3

COUNTY AND CITY COMMIT- TEEMEN

See Committeemen	662-663
------------------------	---------

COUNTY ATTORNEY

Coal dealers law, duty to en- force	3546.6
Duty to prosecute for failure officers to provide sinking funds	463.3
action, how tried.....	463.3
Duty to report to state examiner when	210
Duty to represent state on mort- gage foreclosures when ..	1805.112
Duties in connection with school bond proceedings	1224.23
Salary, how paid	4868

COUNTY AUDITOR

See Auditor, County	
---------------------	--

COUNTY BOARD OF EDUCA- TIONAL EXAMINERS

Creation and duties.....	1090-1091
--------------------------	-----------

COUNTY CLERK

Annual report, duty to make....	4814
salary warrant, when withheld	4814.1
Clerk board county commission- ers	4811
Duties of	4811
Duty to arrange ballots at pri- mary election	649
Duty to report valuation school districts	1215

INDEX.

[References are to Sections]

COUNTY CLERK (Continued)

Duty to post lists of voters when	540.2
Transcribing records on creation new county	4402

COUNTY COMMISSIONERS

Advertising county resources authorized	4470.1
amount of appropriation.....	4470.2
Appoint county high school trustees	1267
Barbed wire fences, authority concerning	3376.2-3376.3
Bonds for highways, power to issue	1622
Clerk of board.....	4811
Deputies and assistants to county officers, power to regulate appointment and salary	4874
Duty to enter report state examiner in minutes.....	210.1
Duty to furnish books third class school districts	1014.4
Election judges appointment of number of	587
Election on creation new county	4396.2
Enumeration of powers.....	4465
Expenses attending general meetings county commissioners, payment of	443
Grant of right of way for pipeline construction	4465.1
Joint school district levies, duty to make	1036.1-1036.2
Liability for failure to make school district bond tax levy	1224.27
court may mandamus.....	1224.27
Old age pensions: See Old Age Pension Act	4541.1-4541.25
Payment of workers exterminating insect pests	4502
purchase of equipment to exterminate pests	4503
Petty cash fund, power to set aside	4632
Powers of generally	4465
account, examination and allowance	4465
bonds power to issue.....	4465
care for county property....	4465
compensation of officers, powers over	4465
divide county into townships.	4465
election precincts	4465
highways, management of..	1622-4465
insure county buildings	4465
licenses	4465
printing, power to contract for	4465
poor, care of	4465
public buildings, power to erect	4465
Powers of generally publish record of proceedings of	4465
sale of property at auction...	4465
seal, adoption of	4465

COUNTY COMMISSIONERS (Continued)

Powers of generally (Continued) suits, control of	4465
supervision other county officers	4465
taxes, power to levy.....	4465
vacancies, power to fill.....	4465
Powers over highways.....	1622
Refunding bonds, power to issue	4614
Reports concerning highways, duty to make	1622
Roadbuilder, power to employ..	1622
Road districts, power to create.	1622
Rodent destruction authorized, procedure	2561.1-2561.6
Roundup of abandoned horses by	4520.3
Sale of unredeemed county property by	2235
Seed liens, duty to release when	1805.111
Weed commissioners, employment by	4508
inspection and notice to land owner	4509
procedure when noxious weeds in crops	4512
recovery of cost from owner..	4511
service of notice	4510
procedure to enforce notice.	4511

COUNTY HIGH SCHOOLS

See Schools Public: Sub-title, High Schools

COUNTY OFFICERS

Deputies, limitation on appointment as	412
--	-----

COUNTY SUPERINTENDENT OF SCHOOLS

Duties in connection with teachers' retirement salary act..	1124
Statement by as to number of teachers, etc.	1212

COUNTY SURVEYOR

Control of highways by in certain counties	1622.1
powers and duties	1622.1
Highway plat books, duty to prepare	1622
Road supervisor abolished	1622.2
Special deputy to be appointed when	1652

COUNTY UNIT SYSTEM

Procedure for adoption	1042
------------------------------	------

COURT COSTS

See Costs	9799-9810
-----------------	-----------

COURT STENOGRAPHERS

Salary and expense allowance..	8933
--------------------------------	------

COYOTES

Bounty on	3407.1
-----------------	--------

INDEX.

[References are to Sections]

CREAM

- Cleansing of containers required 3572.1
- penalty 3572.2
- Sampling, regulation of 3570.2

CRIME

- Drunkenness no excuse for.... 10728

CRIMINAL OFFENSES

- Alien land law, violation of.... 3043.6
- Apple box act, violation of.... 4272
- Automobile driver, failure to report accidents 1744.1
- Automobiles, operating without certificate of title..... 1763.4
- alteration of engine number..1763.15
- alteration or forgery certificate of title1763.12
- false statements in application for registration.... 1763.9
- fraudulent transfer of..... 1763.9
- Bank act, violation of. See Banks and Banking
- Boiler inspection act, violation of 2726
- Bounty claims, presenting false claims3407.3-3407.9-3407.11
- forgery of 3407.9
- Boxing and wrestling law, violation of 4562
- Building and loan association act, violation of...6355.35-6355.37
- Burning forest material during prohibited season..... 2778.4
- Candidates' expense accounts, failure to file on city manager plan elections 5418
- Discrimination law, violation of 2631
- Embezzlement funds fire department relief association.... 5124
- Estray cattle, violation act concerning 3341.1
- Explosives, use in taking fish.. 3717
- Failure clerk school district to take census 1051
- False advertisement dairy substitutes 2622.2
- False application for refund gasoline tax2396.20
- False statements on application for oil and gas leases.....1882.22
- False swearing at special school elections 1223
- Fish and game laws, violation of. See Fish and Game Laws
- Gasoline dealers inspection act, violation of3913.20
- Gasoline dealers law, violation of2396.15
- Gates, penalty for leaving open 11528
- Interest state officers in public contracts 293.12
- Interfering with department agriculture in making inspections 3570
- Intoxicating liquor, sale to minors11048.1

CRIMINAL OFFENSES (Continued)

- Land laws, violation of..... 1805.118-1805.119
- Meat inspection act, violation of3350.13
- Milk and cream stations, operating without license..... 3570
- Misconduct of officers charged with enforcement oil and gas laws1882.21
- Mortgaged property, selling or removing 8291
- Motor vehicle transportation act, violation of 3858.9
- Narcotics, illegal possession or sale 3202
- Oil and gas conservation act, violation of 3547.3
- Old age pension, false procurement of4541.16
- other penalties4541.17
- Oleomargarine law, violation of 2622.3
- Optometry law, violation of.... 3167
- Pasteurization law, violation of 3572.2-3572.8
- Podiatry law, violation of..... 3154.9
- Poison, use in taking fish..... 3717
- Quarantine against diseased animals, violation of 3267.2
- Railroad tracks, deposit of substances on or near.....11473.1
- Removing or defacing legislative property 78.4
- Running stock or bulls in herd districts 3385
- Sleigh runners, violation law concerning 1749.2
- Standard dairy measure law, violation of 3571
- Violation laws relative to state lands1805.118-1805.119

CROPS

- Extermination weeds. See County Commissioners ..4508-4512

CRUELTY TO ANIMALS

- What facts must be alleged and proved11515A

CUSTODIAN

- Records G. A. R. See Grand Army of Republic.....320-324

CUSTODIAN STATE CAPITOL

- Duty to care for legislative property 78.2
- To receipt for property inventoried 78.2

DAIRYING

- See, also, Dairy Products
- Babcock test adopted 3570
- examination to operate 3570
- false determination prohibited 3570
- method of conducting..... 3570

INDEX.

[References are to Sections]

DAIRYING (Continued)

Babcock test adopted (Continued)	
regulation of use	3570
revocation of license	3570.1
Butter defined	3568
maker's name to appear on package	3571
renovated butter defined.....	3568
standard measure for.....	3571
tolerances to be established..	3571
Cheese defined	3568
Cheese factories, license of....	3569
Cleansing of milk containers required	3572.1
penalty	3572.2
Cream buying and collecting stations, license	3569.1
Creameries, license of	3569-3569.1
Department of agriculture to regulate industry	3568
extension work, duty to conduct	3568
regulation of standards.....	3568
samples and tests, duty to make	3568
record of samples prima facie evidence	3568
statistics, duty to compile....	3568
Factories, registry of location..	3569
Ice-cream factories, license of..	3569
milk and cream to be pasteurized	3572.5
License of cheese factories.....	3569
License of creameries.....	3569
License of cream buying stations	3569.1
License of ice-cream factories..	3569
Milk, standard measure for....	3571
to be pasteurized when and how	3572.3-3572.8
Milk and cream buying and collecting stations	
boiler requirements	3569.2
license, duty to procure.....	3570
license of	3569.1
location of stations, regulation of	3570
penalty for interfering with inspection	3570
penalty for operating without license	3570
penalty for violation act.....	3569.3
regulation of rooms	3569.2
unsanitary operation forbidden	3570
Pasteurization when required.	
See Pasteurization	3572.3-3572.8
Sampling of milk and cream, regulation	3570.2
Standard measure for dairy products	3571

DAIRY PRODUCTS

Adulteration forbidden	2623A
Advertisement substitutes, regulation of	2622.1
penalty	2622.2

DAIRY PRODUCTS (Continued)

Coloring matter, prohibition of use when	2627
Discrimination in purchase forbidden	2630
penalty	2631
Imitation butter, regulation of sale	2622
License for producers of.....	3282
effect unconstitutionality act.	3282.1
Oleomargarine regulation of sale and use	2622
license of dealers in.....	2622.3
coloring forbidden	2627
Skimmed milk, regulation of sale	2628
Trademarks, registration by dealers	2629

DAMAGES

Trespassing stock, marking boundaries land	3382
When allowed in actions against railroads	3808

DANCES

Regulation attendance minors at	11039.1
---------------------------------------	---------

DEALERS

Automobile. See Motor Vehicles	
Coal. See Coal Dealers..	3546.1-3546.6
Gasoline dealers. See Gasoline Manufacturers and Dealers	3913.1-3913.22
In farm produce, regulation of	3649.1-3649.3

DECISIONS

Supreme court. See Supreme Court Reports	380-383
--	---------

DEEDS

See Taxation	2209.1-2235
--------------------	-------------

DEER

Open and closed season for hunting	3697
buck law	3697
penalty for destroying evidence of sex	3698

DEFECTIVES

See Eugenical Sterilization Law	1455.1-1455.8
---------------------------------------	---------------

DELEGATES TO NATIONAL CONVENTIONS

See Elections: Sub-title, Presidential Electors	673.1-673.8
---	-------------

DEPARTMENT OF AGRICULTURE

See Agriculture, Department of	
--------------------------------	--

INDEX.

[References are to Sections]

DEPARTMENT OF STATE LANDS AND INVESTMENTS

Agricultural lands, classification of	1805.16
Amortization plan	1805.79-1805.80
Amortization plan bonds for state investments	1805.99
conversion other bonds into	1805.100
Amortization delinquent farm loans	1805.106-1805.112
Appraisal of city and town lots	1805.67
Appraisal of state lands	1805.17
Assignment of certificates of purchase	1805.90
Assignment of leases	1805.32
Assistant commissioner of state lands, appointment	1805.7
duties	1805.11
salary	1805.14
Attorney general to approve bond issues	1805.103
to take charge delinquent loans	1805.103
Auction sales of land. See sub-title, Sales of State Lands	1805.72-1805.77
Bidders, penalty for failure to make payment	1805.75
Board of land commissioners, compensation, duties	1805.3
may correct errors in deeds	1805.115
meetings	1805.4
Bond on coal land leases	1805.42
Bond on leasing state lands	1805.29
Bond on mining permits	1805.48
Bonds of officers	1805.13
Certificates of purchase	1805.85
Chief of field agents, appointment	1805.7
duties	1805.12
City and town lots, leases of	1805.20
Classification of state lands	1805.16
further rules may be prescribed	1805.18
Clay, leases of land for	1805.52
Coal mining leases. See sub-title, Leases of Coal Lands	
Commissioner of state lands, appointment, term and bond	1805.5
appointive power, management offices	1805.7
biennial report, duty to make	1805.10
employees appointed by	1805.7
fees to be collected by	1805.120
powers and duties	1805.8
reports	1805.8
biennial report	1805.10
salary	1805.14
state treasurer to report to	1805.9
Confirmation of sales	1805.82
Conversion of certificates to amortization plan	1805.80
Creation and purpose	1805.1
Default in payment, procedure on	1805.88
Definition of terms	1805.2

DEPARTMENT OF STATE LANDS AND INVESTMENTS (Continued)

Delinquent farm loans, amortization of	1805.106
Donations, acceptance authorized	1805.114
Easements, grant for school sites	1805.57
Easements, grant to United States for right of way	1805.56
Effect partial invalidity act	1805.122
Exchange of state lands how made	1805.19
Farm loans, conversion to amortization mortgages	1805.106
Farm loans, attorney general to take charge when	1805.108
county commissioners to re-lease seed liens	1805.111
county attorney to represent state	1805.112
lien on crops	1805.107
repurchase, conditions of	1805.110
sheriff's deed may be taken	1805.109
Federal land grants, acceptance of	1805.113
Fees to be collected by commissioner	1805.120
Form of lease	1805.29
Forester, state administrative officer	1805.6
Grant of school lands, acceptance of	1808.1
Gravel, leases of land for	1805.52
Grazing land, lease of	1805.20
Grazing leases. See sub-title, Leases of Agricultural and Grazing Lands	
Gifts and donations, acceptance authorized	1805.114
Headings no part of act	1805.121
Highways, grant of right of way for	1805.58
Illegal cultivation, liability for	1805.28
Improvements by lessee, compensation for	1805.34
Improvements of lessee, settlement for	1805.83
Improvements, procedure for sale by owner	1805.22
Installments, payment of	1805.87
Interest on balance of purchase price	1805.86
Investments	
amortization plan for payment bonds	1805.99
amortization conversion other bonds	1805.100
approval proceedings by attorney general	1805.103
county and school warrants may be bought	1805.101
creation and powers of department	1805.1
composition	1805.2

INDEX.

[References are to Sections]

DEPARTMENT OF STATE LANDS AND INVESTMENTS (Continued)

Investments (Continued)	
permanent funds how invested	1805.93
public school income fund, investment	1805.102
securities, how paid	1805.104
treasurer to keep securities and record	1805.105
Irrigation districts, purchaser may sign petitions relating to	1805.93
Irrigation works, sale of land to United States for	1805.56
sales, how made	1805.69
Land grants, acceptance of	1805.113-1808.1
Leases of agricultural and grazing lands	1805.20
assignment of	1805.32
bond	1805.29
cancellation of leases	1805.36
change in terms of lease	1805.28
expiration of lease	1805.24
form of lease	1805.29
how much may be leased	1805.23
improvements, compensation for	1805.34
leases to be in compact bodies	1805.27
leasing regulations	1805.37
liability for illegal cultivation	1805.28
lien on crops and improvements	1805.31
preference given actual users	1805.32
preference rights of former lessee	1805.35
renewal of	1805.21
rentals amount and how fixed	1805.25
share rental authorized	1805.30
when due	1805.26
who may lease	1805.23
water rights acquisition by lessee	1805.33
Leases of coal lands	
application for	1805.41
authorized when	1805.38
board may make additional rules	1805.44
bond required	1805.42
conditions of	1805.38
deposit required	1805.41
improvements of former lessee, protection	1805.43
limitation on amount of land leased	1805.39
royalties, amount of	1805.40
royalties, disposal of	1805.47
royalties, report and payment of	1805.45
school permits for leasing coal lands	1805.46
Leases of mineral lands	
annual prospecting permit	1805.49
authorized when	1805.48
bond required when	1805.48

DEPARTMENT OF STATE LANDS AND INVESTMENTS (Continued)

Leases of mineral lands (Continued)	
discoverer to have right mining lease	1805.50
royalties, amount of	1805.50
royalties, disposal of	1805.51
term of permit	1805.49
Leases of oil and gas lands.	
See main title: Oil and Gas Lands	1882.1-1882.24
Leases of stone, oil shale, clay and gravel lands	
authorized when	1805.52
bond or cash deposit demanded	1805.52
disposal of royalties	1805.53
leasing of land for other purposes	1805.54
permits for public use	1805.55
Lien on crops and improvements	1805.31-1805.81
Lieu lands, see section or	1805.15
Limitation of actions for cancellation patents	1805.97
Loans. See sub-title, Farm Loans	1805.106-1805.112
Lost certificates, procedure	1805.91
Minimum sale price of lands	1805.75
Mining leases. See sub-title, Leases of Mineral Lands	1805.48-1805.51
Mistake, refund of money paid by	1805.116
Mortgages lands included in auction sales	1805.74
sale on sealed bids	1805.77
disposal at private sale	1805.78
Mortgages, conversion to amortization plan	1805.106-1805.112
Notice of auction sale of land	1805.73
Oaths of office	1805.13
Officers and employees, offenses by	1805.118-1805.119
Oil and gas lands, leases of. See main title: Oil and Gas Lands	1882.1-1882.24
Oil shale, leases of lands containing	1805.52
Payment terms of	1805.79
Patents, issuance of	1805.95
Patents, how executed, conditions	1805.96
Penalty for illegal grazing	1904
Penalty for holding over and trespass	1904
Penalty for violation act	1805.118-1805.119
Permits for stone, gravel, etc., for public use	1805.55
Permits for schools leasing coal lands	1805.46
Powers and duties of department	1805.1
Preference right of former lessees	1805.35

INDEX.

[References are to Sections]

DEPARTMENT OF STATE LANDS AND INVESTMENTS (Continued)

Premium on bonds, how paid.....	1805.13
Prospecting permits	1805.48-1805.51
Public auction sale. See sub- title, Sales of State Lands	
Railway grants of right of way	1805.62
Reclassification lands	1805.16
Records of board of land com- missioners	1805.4
Refund of money paid by mis- take	1805.116
Renewal of leases when	1805.21
Rentals, amount and how de- termined	1805.25
when due	1805.26
Repealing clause	1805.123
Repurchase of lands when al- lowed	1805.89
after sheriff's sale when al- lowed	1805.110
Reports to be made by state treasurer	1805.9
Rights of way granted for high- ways	1805.58
act retroactive	1805.59
Right of way over lands under certificate of purchase	1805.60
easement for outside section lines when	1805.61
compensation for damages, award of	1805.61
for railroads and other pur- poses	1805.62
settlement with lessees for.....	1805.63
Royalties on coal land leases.....	1805.40
Royalties on mineral reserva- tions	1805.65
Royalties on oil and gas. See Oil and Gas Lands	
Salary of commissioner and as- sistants	1805.14
Sale of improvements by owners	1805.22
appraisement of value	1805.22
Sale of state lands	
amount that may be bought by one person	1805.71
amortization plan1805.79-1805.80	
appraisal of city and town lots	1805.67
filing of plat	1805.67
appraisal of state lands.....	1805.17
assignment of certificates of purchase	1805.90
auction sales, where held.....	1805.72
conduct of sale	1805.75
minimum price	1805.75
mortgaged lands may be sold	1805.74
mortgaged lands sold on sealed bids	1805.77
mortgaged lands sold at private sale	1805.78
notice of sale	1805.73
penalty for failure of bidder to pay	1805.75

DEPARTMENT OF STATE LANDS AND INVESTMENTS (Continued)

Sale of state lands (Continued)	
board to decide when to hold sales	1805.70
board may prescribe rules.....	1805.76
certificates of purchase	1805.85
cities and towns, land ad- jacent platted	1805.67
appraisal of	1805.67
discretionary with board.....	1805.68
confirmation of sales	1805.82
conversion certificates to amor- tization plan	1805.80
default in payment, pro- cedure on	1805.88
how much land may be bought	1805.71
improvements of lessee, settle- ment for	1805.83
in federal irrigation projects, how sold	1805.69
installments, payment of	1805.87
interest on balance purchase price	1805.86
irrigation districts, purchaser may sign petitions relat- ing to	1805.91
lien for payment	1805.81
lost certificate, procedure on.....	1805.91
minerals to be reserved.....	1805.65
minimum price for lands.....	1805.75
mortgaged lands, how sold....	1805.74-1805.78
notice of sale	1805.73
patents, issuance of	1805.95
patents, how executed	1805.96
patents, cancellation of	1805.97
possession when given	1805.84
proceeds of sale how disposed of	1805.77
purchaser's interest subject to liens	1805.93
repurchase of land where cer- tificate canceled	1805.89
application for	1805.89
reservation of minerals on sale	1805.65
reversion of land, procedure on	1805.94
royalty for minerals	1805.65
shore land, how sold	1805.66
taxation of interest of pur- chaser	1805.92
terms of payment	1805.79
amortization plan	1805.79
timber lands not subject to sale	1805.64
who may purchase	1805.71
Sand, leases of land for	1805.52
School funds, investment of....	1805.98-1805.105
School permits for leasing coal lands	1805.46
School sites, grant of lands for.....	1805.57
Selection of lands to be made	1805.15
Share rental authorized	1805.30

INDEX.

[References are to Sections]

DEPARTMENT OF STATE LANDS AND INVESTMENTS (Continued)

Shore lands, how sold	1805.66
Stone, leases of land for.....	1805.52
Streets, grant of right of way for	1805.58
Summer resorts, reservation from sale	1805.66
Taxation interest of purchaser.....	1805.92
Timber lands not subject to sale	1805.64
Trespass on state lands, penalty for	1904
United States, easement for right of way	1805.56
irrigation works	1805.56
Water rights, acquisition by lessees	1805.33
What lands may be sold	1805.64
Who may lease lands.....	1805.23
Who may not buy or lease lands	1805.117

DEPENDENT CHILDREN

See Mothers' Pension Act.....	10482
-------------------------------	-------

DEPOSITARIES

City funds, regulation of deposit	4767
County funds, regulation of de- posit	4767
State funds, regulation of.....	182

DEPUTIES

County commissioners may regu- late appointment and salary	4874
County officers may be appointed when	412

DIPLOMAS

Granted on recommendation state board education	854
--	-----

DISABLED SOLDIERS

See Vocational Rehabilitation..	
.....	3051.1-3051.3

DISCRIMINATION

In purchase of milk or cream forbidden	2630
penalty	2631

DISCRIMINATION

Unfair discrimination in pur- chase of commodities for- bidden	10904
--	-------

DISQUALIFICATIONS

District judges, when and how effected	8868
---	------

DISSOLUTION

Corporations by order of dis- trict court	9927
--	------

DISTRICT HIGH SCHOOLS

See Schools Public: Sub-title, High Schools	
--	--

DISTRICT JUDGES

See Judges

DOGS

Chasing game with, regulation of	3694
---	------

DONATIONS

Acceptance by state board land commissioners authorized...	1805.114
Cities may receive	5044.1
Counties may receive	5044.1

DORMITORIES

High schools may procure land for	1271.1
Leases county lands for author- ized	1015.8
Legalization acts relative to....	1015.7

DRAFTS

Banks may issue	6014.74
-----------------------	---------

DRAINAGE DISTRICTS

Assessments, additional, how made	7342
Commissioners, appointment by the court	7280
election, term and qualifica- tions	7283
notice of elections	7283B
term of	7282
Dissolution of, procedure for ...	7265A
petition and order	7265A
Division of district, order of court	7280
petition for	7280
Election of commissioners	7283
manner of conducting elec- tions	7283B
nominations, how made	7283D
notices, ballots and polling places	7283A
qualifications of electors	7283C
who to be declared elected...	7283B
vacancies, how filled.....	7284
Illegal assessments, additional, how made	7342
Nomination of commissioners, how made	7283D
Taxes, collection by county treasurer	2172.1
Vacancies in commission, how filled	7284

DRUGS

See Opiates	3186-3202.2
-------------------	-------------

DRUNKENNESS

No excuse for crime	10728
to what extent considered...	10728

DUCKS

Bag limit and season for hunt- ing	3703
---	------

DYNAMITE

Use in taking fish prohibited...	3717
----------------------------------	------

INDEX.

[References are to Sections]

EASTERN MONTANA STATE NORMAL SCHOOL

Acceptance gifts and donations authorized	930.4
Establishment	930.1
Location, how selected.....	930.5
Management	930.3
Objects and purposes.....	930.2
Selection of site.....	930.6

EDUCATION, STATE BOARD OF

Appointment and term.....	831
Authorized to administer federal appropriations for Indians..	2460.2
budgets, authority to submit..	2460.3
Constitutes common school equal- ization board	1201.2
equalization of school program by	1201.3
funds, how distributed by....	1201.4
Diplomas granted by.....	854

EDUCATIONAL EXAMINERS, COUNTY BOARD OF

Creation and powers.....	1090, 1091
--------------------------	------------

EDUCATIONAL EXAMINERS, STATE BOARD OF

Creation and powers.....	1089
--------------------------	------

EDUCATIONAL FUNDS

Investments, how made...1928A-1932B	
-------------------------------------	--

ELECTIONS

Absent Voters' Law	
application for ballot, form of	717
county clerk to compare signa- tures	718
delivery of ballot.....	718
mailing of voted ballot.....	721
marking and swearing to ballot	721
sealing of ballot.....	721
Ballots	
number to be prepared for each precinct	687
County commissioner on creation new county	4396.2
Discontinuance county high schools	1301.2
Judges, how appointed.....	587
number of.....	588
Initiative and referendum meas- ures, how submitted.....	103
Nominating conventions	
certificates, when and where filed	618
declining of nominations, how names of nominees to be cer- tified	620
On adoption commission manager plan of government.....	619
Precincts, establishment of.....	5415
Presidential electors	4465
county conventions, how and where held	4665
duties county chairman....	673.3

ELECTIONS (Continued)

Presidential electors (Continued)

delegates to national conven- tions, how nominated.....	673.2
election of	673.5
expenses delegates, how paid..	673.8
organization of county conven- tion	673.5
political party defined.....	673.8
presiding officer at county con- vention	673.4
at state convention	673.7
state convention when and where held	673.6
notice of holding	673.7
how conducted	673.7
Primary nominating elections	
acceptance of nomination, how made	640
arrangement and certification of names	648
ballots, how arranged and voted	651
city and county committee- men, how elected.....	662
date of holding	632
fee for filing petitions.....	640
form of petition.....	641
names of nominees to be posted	649
national committeeman, how elected	663
powers and term.....	663
nominees on dual tickets to elect	651
party nominations, how made.	639
petitions, where and how filed	640
register of candidates and nom- inees	645
rotation of names on ballots..	651
sample ballots, preparation...	652
secretary of state, duties of..	648
time for filing petitions.....	644
what officers chosen at.....	632
what parties may hold pri- maries	639
School bonds, election on issu- ance. See Schools Public:	
Sub-title, Bonds1224.1-1224.34	
School election, special to raise tax in excess of ten mills..	1219
State senator on creation new county	4396.1

ELECTION PRECINCTS

Establishment by county com- missioners	4465
--	------

ELECTORS

Qualifications on elections for creation public indebtedness	540.1
lists to be posted.....	540.2
Qualifications on school district bond elections	1224.12

ELK

Regulation of hunting.....	3696
----------------------------	------

INDEX.

[References are to Sections]

EMINENT DOMAIN

Appeals from assessments by commissioners	9947
costs, when recovered.....	9947

ENGINEERS

Salary capitol engineers.....	439
-------------------------------	-----

ENGLISH LANGUAGE

Police officers must speak and write	5106
--	------

ENTOMOLOGIST, STATE

Destruction insect pests, cost, how paid	916
Salary and expenses	916

EQUALIZATION COUNTY AND STATE BOARDS

See Taxation

EQUALIZATION, STATE BOARD OF

See Taxation	
Inheritances taxes, regulation of. See Inheritance Tax.....	10377.1-10377.25

ESTATES

See Trust Estates.....	9575.1-9575.10
------------------------	----------------

ESTATES OF DECEDENTS

See Probate Proceedings

ESTIMATES

Supplies to be prepared by departmental heads	293.7
---	-------

ESTRAYS

See Livestock	3338-3341.1
---------------------	-------------

EUGENICAL STERILIZATION LAW

Consent of guardian to be procured	1455.6
Definition of terms.....	1455.2
Responsibility for sterilization..	1455.5
State board of eugenics	1455.3
duties of	1455.4
liability of members.....	1455.7
purpose of findings and orders	1455.8
Title of act	1455.1

EVIDENCE

Certificate discharge from insane asylum	5685
Certified copy articles of building and loan associations as	6355.3-6355.4
Handwriting of testator and subscribing witnesses on proof of wills	10030

EXAMINATIONS

School-teachers. See Schools, Public: Sub-title, Examination of Teachers	1088-1104
State examiner to make what...	210
Superintendent of public instruction to prepare questions...	944

EXAMINER, STATE

County attorney to report to, when	210
County commissioners to enter report in minutes.....	210.1
Duties generally	210
Duties with reference to public deposits	4767
Ex-officio superintendent of banks	6014.55
Methods of accounting to be prescribed by	210
Publication of report.....	210.1
Reports to be made by.....	210
State examiners' fund.....	6014.73
What accounts to be examined by	210
What institutions to be visited by	210

EXAMINERS, STATE BOARD OF

Expense accounts	
construction of act.....	458.6
files to be kept by.....	458.3
form of statement.....	458.2
investigation of reports.....	458.4
separate reports to be filed with	458.5
state officers to file expense accounts	458.1
Investment special funds in general fund warrants authorized	270
exception fish and game fund	270
May authorize payment traveling expenses state officers..	443
State purchasers to be approved by	287
To approve plans for monument	319.1

EXECUTIONS

Return of sale of real estate, recording	9441.1
Who may redeem from sale of real property	9442
redemption by corporations...	9444

EXECUTORS

See Probate Proceedings

EXEMPTIONS

See, also, Attachment	
Federal, state and city cars from licenses	1760
State and public officers from costs and damages.....	9810
State hail insurance money from levy	363.1

INDEX.

[References are to Sections]

EXPENSES

Court stenographers' allowance..	8933
Limitation officers attending conventions	443
Officers to file itemized statement. See Examiners, State Board of: Sub-title, Expense Accounts	458.1-458.6
State entomologist, how paid....	916

EXPLOSIVES

Use in taking fish prohibited...	3717
----------------------------------	------

EXTENSION WORK

Department of agriculture to carry on	3569
---	------

FACTORIES

Establishment at state prison	12447.1-12447.11
-------------------------------------	------------------

FAIRS

County fair commission, appointment	4545
appropriation and tax levy....	4549
State fair earnings, how appropriated	3645
revolving appropriation account	3645.1

FARES

Refunding to students, when....	860
---------------------------------	-----

FARM LOANS

Amortization delinquent state loans	1805.106-1805.112
State loans on amortization plan 1928A conversion of.....	1928B-1932B

FARM PRODUCE

Regulation of dealer in...	3649.1-3649.3
----------------------------	---------------

FARM WAREHOUSES

See Public Warehousemen..	4138.1-4138.9
---------------------------	---------------

FEDERAL GOVERNMENT

Appropriations for Indians, how administered	2460.1
Filing notice tax liens, procedure	2154.1-2154.7
Prisoners to be received in county jails	12472.1
payment for support.....	12472.2

FEDERAL LAND GRANTS

Acceptance of by state.....	1805.113
-----------------------------	----------

FEES

Automobile licenses	1760
how disposed of.....	1760
what fees affected by act....	1760.1
Board of health, how disposed of	2645
Commissioner of state lands...	1805.120
County officers not to receive for own use	4864

FEES (Continued)

Filing articles foreign corporations	145.1
Medical board	3124
Primary election nominating petitions	640
Real estate commissioner, disposal of	4061
Sheriff	4916
State scale expert	3575.2
Teachers' certificates	1095
Witnesses may demand in advance, when.....	4944

FENCES

See Barbed Wire Fences..	3376.1-3376.4
--------------------------	---------------

FERGUS COUNTY

Boundary of	4318
County seat	4318

FINES

Disposal of, statement to be filed	12433
For violation fish and game laws, disposal of	3753
how served out if not paid...	3753

FIRES

See Forester, State.....	2778.1-2778.8
Protection in unincorporated towns. See Cities and Towns	5148A-5150

FIRE DEPARTMENTS

See Cities and Towns.....	5116.1-5150
---------------------------	-------------

FISCAL AGENCIES

See Bonds: Sub-title, Fiscal Agencies	198.9-198.16
---	--------------

FISH AND GAME LAWS

Alien's license, amount of.....	3685
Angling defined.....	3681
Angling, game fish to be taken only by.....	3694
Animals, what are game animals	3681
what are predatory animals...	3681
what are fur-bearing animals.	3681
what kinds may be killed without license	3691
Arrests, wardens may make when and how.....	3659
Artificial lake or pond defined..	3695
Bag limit for grouse and other birds	3701
Bag limit on migratory game birds	3703
Bass, catching in Flathead Lake	3714
Beaver, regulation of trapping..	3722
license required.....	3722
Birds, closed season for certain game birds.....	3700
Birds, penalty for killing or shipping without permit....	3723

INDEX.

[References are to Sections]

FISH AND GAME LAWS (Continued)

Boats, what kind may be used in fishing or hunting.....	3694
Bounty fund, transfer license moneys to.....	3685
Buck law on deer.....	3697
penalty for destroying evidence of sex.....	3698
Carriers, rules for shipment fish and game.....	3734
Catching fish illegally, penalty for.....	3714
Certificate of sale of game when given.....	3727
Chinese pheasants, hunting prohibited.....	3700
Closed season defined.....	3681
Commission, fish and game disposal of property by....	3653
fish ladders, commission may install.....	3653
fish hatcheries, power to provide.....	3653
funds, power to expend.....	3653
game districts, power to create may open season for certain game birds.....	3700
meetings of.....	3652
orders how posted and published.....	3677
organization.....	3652
powers and duties.....	3653
quorum.....	3652
refuges, power to create.....	3653
salary of members.....	3654
Compromise of law violation forbidden.....	3659
Confiscation of fish and game by wardens.....	3659
confiscation from carriers....	3734
Deer, open season for.....	3697
buck law.....	3697
regulation of hunting.....	3697
penalty for illegal hunting....	3697
penalty for destroying evidence of sex.....	3698
Definition of certain terms....	3741
Deputy fish and game wardens, appointment of.....	3656
arrests by.....	3659
duties.....	3656-3659
rating of.....	3661
removal of.....	3661
reports, duty to make.....	3659
salary.....	3656-3661
searches and seizures by.....	3659
special deputy wardens, appointment.....	3662
traveling expenses, allowance of.....	3661
Dogs, chasing game with, regulation of.....	3694
Dolly Varden trout, sale permitted.....	3694
Ducks, bag limit and season on	3703
Dynamite, use prohibited.....	3717

FISH AND GAME LAWS (Continued)

Effect partial invalidity act.....	3742.2-3777.1
Elk, open season for.....	3696
in what counties they may be hunted.....	3696
penalty for illegal hunting....	3696
Evidence, possession dead game and fish as.....	3725
Expenses superintendent state fisheries.....	3665
Expenses deputy wardens.....	3661
Explosives, use in taking fish prohibited.....	3717
Fines and penalties, disposal of how served out if not paid..	3753
Fish and game fund, creation and use.....	3670
Fish hatcheries may be provided	3653
Fish-ladders, commission may install.....	3653
Fish, penalty for illegal catching of.....	3714
Fish-ponds, license of.....	3695
Fish unintentionally caught to be returned to water.....	3694
Fishing licenses. See sub-title, Licenses.....	3681-3691
Fishing, what are game fish....	3681
Flathead Lake, regulation of fishing in.....	3714
Fox, open and closed season for	3704
Funds, commission may expend how.....	3653-3670
Fur-bearing animals defined....	3681
Gallatin, game preserve.....	3764
Game animals defined.....	3681
Game birds, closed season for certain.....	3700
penalty for killing or shipping without permit.....	3723
what birds excepted.....	3723
Game farms, commission may provide.....	3653
license for.....	3777
Game fish defined.....	3681
Gallatin, defined.....	3764
Little St. Joe.....	3778.7
penalty for hunting in.....	3778.8
Spotted Bear.....	3778.5
penalty for hunting in.....	3778.6
Teton Spring Creek.....	3778.3
penalty for hunting in.....	3778.4
Wolf Creek.....	3778.1
penalty for hunting in.....	3778.2
Game refuges, creation of.....	3653
procedure to create.....	3653
Geese, closed season and bag limit on.....	3703
Goats, penalty for hunting.....	3699
Grouse, open and closed season for.....	3701
Guides, license of.....	3745
Hunting licenses. See sub-title, Licenses.....	3681-3691
Ice, fishing through prohibited..	3694

INDEX.

[References are to Sections]

FISH AND GAME LAWS (Continued)

Illegal taking of fish, penalty for	3694
illegal shipment or sale.....	3695
Illegal killing or shipping of game birds, penalty for....	3723
Illegal transportation, penalty for	3735
Kootenai River, regulation of fishing in.....	3694
Labeling of packages on shipment from state.....	3733
Licenses	
alien license.....	3685
beaver trapping license.....	3722
citizen's license.....	3685
classes of licenses.....	3683
compensation of person issuing	3707
definition of terms.....	3681
disposal of moneys, how.....	3685
exhibition of license required exception from act.....	3691
fees for.....	3685
game farms.....	3777
guides	3745
license required.....	3682
nonresident's license.....	3685
private fish-ponds.....	3695
raising game.....	3777
resident citizens, who deemed seining license....	3694
taxidermists	3751
trapper's license.....	3685
what animals may be killed without license.....	3691
Limit on number and weight of fish that may be caught....	3694
dried fish included.....	3694
Little St. Joe game preserve	3778.7-3778.8
Maxim silencers, use forbidden	3694
Mink, open and closed season for	3704
Migratory game birds defined	3681-3703
Missouri River regulation fishing in	3694
Muskrat, open and closed season for	3704
destroying houses of forbidden trapping permit when granted out of season.....	3704
Nongame birds defined.....	3861
Nonresident's license	3685
Nonresident's permit to ship from state	3732
Otter, open and closed season for	3704
Orders of commission, how posted and published	3677
Partridge, bag limit and season on.....	3701
Penalty, generally for violation fish and game laws.....	3706
Penalty for illegal taking fish	3694-3714

FISH AND GAME LAWS (Continued)

Penalty for unlawful possession or shipment.....	3742
Penalty for violation act.....	3742.1
Permits to ship from state..	3731-3735
Pheasants, hunting prohibited..	3700
Poison, use in taking fish prohibited	3717
Possession dead fish or game as evidence	3725
Power boats prohibition of use when	3694
Predatory animals defined.....	3681
Private fish-ponds, regulation and license of.....	3695
Publication of orders of commission	3677
Raccoon, open and closed season on	3704
Railroads, regulation shipment fish and game.....	3730-3734
Refuges for game creation of..	3653
Removal fish or game from state, penalty for.....	3730
labeling of packages.....	3732
permit for when granted.....	3731
permits for nonresidents.....	3732
Resident hunting and fishing license	3685
Rocky Mountain sheep or goats, penalty for hunting.....	3699
Sable, open and closed season for	3704
Sage-hen, open and closed season for.....	3701
Salary of members of commission	3654
Salary of superintendent of state fisheries	3665
Salary of warden	3655
Salary of deputy wardens.....	3656
Sale of fish, penalty for.....	3694
certificate to be issued when..	3727
Salmon eggs or spawn, commission may regulate use of..	3694
Scientific purposes, possession game for.....	3742
Seining license, regulation of issuance	3694
Searches and seizures by game wardens	3659
Sheep, penalty for hunting....	3699
Shipment from state prohibited penalty for illegal shipment..	3730
regulation of.....	3731-3736
shipping permits, fee for....	3736
when unlawful.....	3742
Shipping birds without permit..	3723
Skins, regulation of shipping beaver skins	3722
Snares, prohibition of use.....	3694
Special deputy wardens, appointment and powers.....	3662
Spotted Bear game preserve	3778.5-3778.6
State fish and game fund, creation and use.....	3670

INDEX.

[References are to Sections]

FISH AND GAME LAWS (Continued)

Superintendent of fisheries, appointment	3664
bond	3664
powers	3666
salary and expenses	3665
Taxidermists license	3751
Teton Spring Creek game preserve	3778.3-3778.4
Trapping beaver, regulation of ..	3722
Trappers license, amount of	3685
Unlawful possession or shipment of game, penalty	3742
Upland game birds defined	3681
Warden, expense allowance	3655
powers and duties	3655
salary	3655
Whitefish, sale of may be permitted	3694
Wolf Creek Game preserve, creation	3778.1
penalty for hunting in	3778.2
Yellowstone River, regulation of fishing in	3694

FLAG

To be displayed at public schools	1015
-----------------------------------	------

FLATHEAD LAKE

Regulation of fishing in	3714
--------------------------------	------

FOREST FIRES

See Forester, State	2778.1-2778.8
---------------------------	---------------

FORESTER, STATE

Administrative officer, duties	1805.6
Burning permits, granting and suspension	2778.4
penalty	2778.4
Definition of terms	2778.3
Duties of persons clearing right of way	2778.5
Duty of timber cutters to remove fire hazards	2778.6
Forest material defined	2778.3
Listing of lands with patrolling agencies	2778.1
Partial invalidity of act, effect of	2778.8
Permits, granting and reservation	2778.4
Piling of brush, regulation of	2778.5
Removal of slash hazards required	2778.7
Slashings lien	2778.7
Uncontrolled fires declared a nuisance	2778.2
liability of property owners	2778.7

FORGERY

Bounty claims, penalty	3407.9
Certificate of title to automobile, penalty	1763.12
False statements in violation automobile registration law	1763.20

FOREIGN CORPORATIONS

See Corporations: Sub-title, Foreign

FORESTS

See State Forests.....1830.1-1830.10

FORFEITURES

Disposal of, statement to be filed 12433

FOX

Open and closed season for hunting
 3704 |

FREIGHT-LINE COMPANIES

Taxation of. See Taxation..2099-2105

FRUIT

How purchased for state institutions
 293.9 |

FUNDING BONDS

Counties may issue when	4614
High school trustees may issue on failure banks when	1254.9-1254.16
School trustees may issue for funds in failed banks when	1254.1-1254.8
School trustees may issue to fund floating indebtedness when	1254.17-1254.24

FUNDS

Abandoned horse fund	4520.10
disposal of	4520.12
Bounty fund	2081
Bounty fund, creation and levy for	3407.10
Controlling fund accounts	
federal land grant income fund	198.6
federal land grant permanent funds account	198.5
federal trust and agency fund	198.4
interest-bearing invested funds account	198.7
new funds how allocated	198.8
state trust and agency fund account	198.3
what controlling fund accounts to be kept	198.1
what shall be recorded therein	198.2
County contingent fund, disposal of surplus	4633
County petty cash fund	4632
Department of agriculture revolving appropriation account	3645
Endowment fund established at schools	1015.1
custody and investment of	1015.4
definition	1015.2
duty of county treasurer	1015.5
how invested	1015.3
memorials to donors	1015.6
Fish and game fund, how expended	3653

INDEX.

[References are to Sections]

FUNDS (Continued)

Forester's co-operative work fund	1830.10
Gasoline inspection fund.....	3913.3
High school dormitory petty cash fund	1271.2
Horticultural revolving fund...	3617.1
Inheritance tax fund.....	10377.23
Investment special state funds in general fund warrants authorized	270
Law enforcement fund transferred	206.1
how used	206.2
Livestock commission fund, how used	3257.1
Medical board fund.....	3124
creation of	3154.7
Montana Pioneers historical fund	1560.2
Northern Montana Agricultural and Manual Training School	921
Permanent common school fund, how invested.....	1928A
other state permanent institutional funds, how invested	1928A
Rocky Mountain spotted fever control fund	2561.2
School funds, investment of. See Department of State Lands and Investments...	1805.98-1805.105
Spanish-American war fund, disposal of.....	1373.1
State beekeepers fund.....	3566.4
State board of health maintenance fund, transfer authorized	2645.1
State common school equalization fund	1201.1
State examiner's fund.....	6014.73
State fair revolving appropriation account	3645.1
State fish and game fund.....	3670
State hail insurance fund.....	355
administrative fund.....	355
State highway funds, how distributed	2396.16-2396.18
State teachers' certificate fund..	1095
Treasury note redemption fund.	5623.6
Veterans' memorial fund.....	4559

FUR-BEARING ANIMALS

Open and closed season on.....	3704
--------------------------------	------

GAME

See Fish and Game Laws

GAME BIRDS

See Fish and Game Laws

GAME PRESERVES

See Fish and Game Laws...3764-3778.8

GAS

See Gasoline

GAS (Continued)

See Gasoline Manufacturers and Dealers	
See Oil and Gas Lands, State	1882.1-1882.24

GASOLINE

Distributors' and dealers' license tax. See Taxation....	2382-2396.20
Producers' license tax. See Taxation	2398-2405
Standards of	3913.6

GASOLINE MANUFACTURERS AND DEALERS

Application for license from railroad commission.....	3913.1
Appropriation	3913.21
Dealers to post notice of grade of product.....	3913.12
duty to submit samples for testing	3913.12
Effect partial invalidity of act	3913.22
Engine distillate excepted from act	3913.13
Fee for license.....	3913.2
Gasoline inspection fund.....	3913.3
Gasoline standards.....	3913.6
Inspectors, employment of.....	3913.17
penalty for obstructing.....	3913.17
Kerosene standards	3913.7
License to be procured.....	3913.1
Measuring devices, inspection of	3913.18
Misbranding defined	3913.16
Names and grades to be indicated	3913.5
Penalty for violation of act....	3913.20
Public service commission to enforce act.....	3913.4
Revocation of license for misrepresentation	3913.15
Registration of trade name by dealer	3913.14
Sampling and employment of inspectors	3913.17
Standards of quality of gasoline	3913.6
Tests to be prescribed by commission	3913.8
state chemist may make.....	3913.9
assistant may make analyses	3913.10
state chemist to give evidence.	3913.11

GATES

Penalty for leaving open.....	11528
-------------------------------	-------

GEESE

Bag limit and season for hunting	3703
--	------

GIFTS

Acceptance by state board land commissioners authorized..	1805.114
Cities and towns may receive..	5044.1

INDEX.

[References are to Sections]

GIFTS (Continued)

Counties may receive.....	5044.1
statutes applicable.....	5044.2

GOPHERS

Extermination authorized, procedure	2561.1-2561.6
---	---------------

GOVERNOR

Designation fiscal agencies.....	198.9
bond to be given.....	198.10
Duty to verify report state treasurer	187.1
May prohibit importation diseased animals.....	3267.1
penalty	3267.2
Superintendent of banks to report to.....	6014.72
To approve state purchases..	293.5-293.7
Trustee Spanish-American war fund	1373.1

GRAIN WAREHOUSEMEN

See Public Warehousemen.	3574.1-3592.9
--------------------------	---------------

GRAND ARMY OF REPUBLIC

Custodian appointment of.....	320
department commander to recommend	320
Expenses housing relics, how paid	324
Records to become property of state	323
Room to be provided for relics and records.....	321
purpose for which used.....	322

GRAVEL

Leases of state lands for.....	1805.52-1805.55
--------------------------------	-----------------

GRAZING

License tax on livestock when brought into state for.....	2087.1-2087.5
---	---------------

GROUSE

Open and closed season for hunting	3701
--	------

GUARDIANS

Service of order of consent and sale of property by.....	10434
--	-------

GUIDES

License of.....	3745
-----------------	------

GUIDE-POSTS

Erection by county commissioners	1622
--	------

GYMNASIUMS

High schools may procure land for	1271.1
Leases county lands for authorized	1015.8

GYPSUM

License tax on sales of.....	2368
------------------------------	------

HAIL INSURANCE, STATE BOARD OF

Adjustment of losses, how made	360
Appraisal of losses.....	360
Benefits exempt from execution	363.1
Board of equalization to prescribe levy.....	351
Borrowing of money when authorized	361
Chairman salary and duties....	363
County treasurer to collect levies	354
Creation powers and duties....	350
Crop lien created.....	350B
tax levy to constitute lien...	351
Duties	350
Execution on hail insurance money forbidden.....	363.1
Farmers to signify acceptance of act.....	350
Forms to be prepared by.....	350
Funds designation of.....	355
Levy on grain in case of default	354A
Levy to provide what.....	352
Limitation on amount of insurance	350A
Losses, report of.....	358
Maximum and minimum rates..	351
Re-appraisement of losses.....	360
payment of losses.....	361
Reserve fund creation.....	352
Salary of chairman.....	363
State hail insurance fund.....	355
administrative fund.....	355
State treasurer duties of.....	355
Tax delinquencies when a bar to insurance.....	350B
Tax levy and lien.....	351
Term of office.....	350
Warrants, when issued.....	361
registration of.....	355

HEALTH OFFICER, COUNTY

Deputies may be appointed when	4527
--------------------------------------	------

HEALTH, STATE BOARD OF

Authorized to administer federal appropriations for Indians..	2460.2
budgets, authority to submit.	2460.3
Fees collected by, how disposed of	2645
Transfer certain funds authorized	2645.1

HERD DISTRICTS

Unlawful for stock to run at large in.....	3385
bulls not to run at large in..	3385

HIGHWAYS

Bonds, county commissioners may issue	1622
---	------

INDEX.

[References are to Sections]

HIGHWAYS (Continued)

Bridges, county and district defined	1652
Contracts restrictions on letting	1622
County surveyor to prepare plat-book	1622
County surveyor to control in certain counties	1622.1
Establishment by county commissioners	4465
Federal aid road proceeds gasoline tax used on	2392-2396.13
Grant of right of way over state lands for	1805.58-1805.59
Guide-posts, erection of	1622
Heavy machinery, regulation of moving	1749
Right of way, acquisition of	1622
Road builder employment of	1622
Road districts, creation of	1622
Road supervisor abolished when	1622.2
Sleigh-runners, regulation of size	1749.1
penalty	1749.2
Special road districts purpose and powers	1652
State highway commission, creation, fees, bond	1783
State highway fund, how distributed	2396.16
Surveyor controls in certain counties	1622
Traffic restrictions, commissioners may provide	1622
Traffic regulations	1743-1749.2
Transportation companies, regulation of. See Trucks, regulation of moving on highway	
Railroad commission: Sub-title, Motor Transportation Companies	3858.1-3858.11

HIGHWAY COMMISSION

Creation, salary and bond	1783
---------------------------------	------

HISTORICAL LIBRARY

See Historical Society of Montana	1560.1-1560.14
---	----------------

HISTORICAL SOCIETY OF MONTANA

Art gallery to be provided in building	1560.12
Building commission, quorum, expenses	1560.10
Building for use of society	1560.5
Design for permanent building	1560.4
Designation of building lot	1560.9
Funds, how used	1560.3
Historical fund	1560.2
Historical library to be designated as	1560.1
Report of completion of work	1560.8
Seal authorized	1560.13
design of	1560.14
Submission of claims	1560.7
Treasurer custodian of funds	1560.3

HIGH SCHOOLS

See Schools, Public; Sub-title, High Schools	
--	--

HOME FOR SOLDIERS

See Soldiers' Home	1529-1546
--------------------------	-----------

HOMESTEADS

Head of family includes whom	6969
------------------------------------	------

HORSES

Roundup of abandoned horses. See Abandoned Horses	4520.1-4520.16
---	----------------

HORTICULTURAL REVOLVING FUND

Creation and use	3617.1
------------------------	--------

HOSPITALS

Establishment by county commissioners	4465
Gifts and donations, power to receive	5044.1

HUCKSTERS

License of. See Taxation	2421.9-2421.15
--------------------------------	----------------

HUMANE OFFICER

Sheriff to perform what duties	4774
--------------------------------------	------

HUNTING

See Fish and Game Laws	
------------------------	--

HUSBAND AND WIFE

Cannot be examined as witness when	10536
--	-------

ICE-CREAM

Defined	3568
Licensing of factories	3569
Pasteurization of cream used in required	3572.5

IMPROVEMENT DISTRICTS

In cities and towns. See Cities and Towns	5228-5276
---	-----------

IMPROVEMENT DISTRICTS—HIGHWAY

See Local Improvement Districts	1686
---------------------------------------	------

INCOMPETENTS

See Insane Persons	5685
--------------------------	------

INDEXES

Criminal bonds kept by clerk of court	4818.1
---	--------

INDIANS

Appropriations for, how administered	2460.1
--	--------

INDEX.

[References are to Sections]

INDUSTRIAL ACCIDENT BOARD

See Workmen's Compensation
Act2837-2990A

INHERITANCE TAX

Advance payment of allowed...10377.8
Amount of tax, primary rates...10377.2
Ancillary letters, petition for...10377.12
Annuities, how computed.....10377.15
Application to board to determine whether tax is due...10377.12
Apportionment of tax moneys...10377.23
Appraisal at clear market value10377.15
 re-appraisement in district court, when10377.15
Appraisers, appointment of.....10377.13
Attorney general, collection unpaid tax by.....10377.16
 duty of legal department of state10377.18
Bequests to executors for services taxable10377.10
Blanks and form prescribed by board10377.18
Bond for payment of deferred tax10377.9
Citation to compel payment, when issued10377.16
Clear market value, tax computed on10377.1
Clerk of district court, duties...10377.18
Collection of tax by executors...10377.7
Collection of unpaid taxes....10377.16
Commissioner of insurance to value future estates.....10377.15
Compromise and composition of tax10377.20
Contingent encumbrances, how estimated10377.15
Contingent estates, tax on payable, when10377.15
County treasurer, quarterly report of10377.19
Deduction of tax from legacy required10377.7
Deductions allowable10377.1
Definition of terms10377.22
Discount when allowed10377.6
District court, jurisdiction under act10377.12
 ancillary letters, petition for...10377.12
Disposition of tax money....10377.23
Due when10377.5
Executors to produce receipts on final accounting10377.5
 duty to collect tax.....10377.7
Exemptions, what allowed....10377.4
 property without state.....10377.4
Hearing by state board of equalization10377.25
Hearing of report of special appraisers10377.15
Holding companies, duty concerning transfers10377.11
 penalty for violation act...10377.11
How and when tax is imposed..10377.1

INHERITANCE TAX (Continued)

Inheritance tax fund, creation and use10377.23
Insurance deemed part of estate...10377.1
Intangibles defined10377.22
Interest charged when.....10377.6
Interest on deferred taxes.....10377.9
Interest determinable by death, how valued10377.15
Joint estates, transfers, how taxable10377.1
Legal department of state, duty concerning administration of act10377.18
Nonresident decedents, regulation transfers by.....10377.11
 apportionment of debts and exemptions10377.11
 effect partial invalidity of act10377.116
 limitations of act, retroactive effect10377.11
 notice of transfer of stock..10377.11
 penalty for violation of act..10377.11
 reports to be made to board of equalization10377.11
Nonresidents' estates, board to determine tax10377.12
Order determining tax, contents and notice10377.15
 rehearing when and to whom granted10377.15
Payment of tax to state.....10377.19
Postponed tax on undiminished value10377.15
Primary rates, schedule of....10377.2
 other rates10377.3
Proceeds of tax, how disposed of10377.23
Public administrator, appointment of as special administrator when10377.17
 duties and compensation....10377.17
Rates, schedule of primary rates10377.2
 other rates10377.3
Re-appraisement in district court, when allowed.....10377.15
Receipt to be issued by treasurer10377.5
 copies and recording of....10377.21
 executors to furnish on final account10377.5
Refund of tax, how and when made10377.8
Rehearing on determination of tax10377.15
Repealing clause, exceptions...10377.26
Special administrator, appointment for purpose of determination of tax.....10377.17
Special appraisers, appointment to fix fair value of property10377.13
 duties, power and compensation10377.14

INDEX.

[References are to Sections]

INHERITANCE TAX (Continued)

Special appraisers (Continued)	
hearing on report by the court	10377.15
State board of equalization to determine tax	10377.12
appeals from orders	10377.12
State board of equalization to supervise tax	10377.18
hearings by	10377.25
legal department, duty of	10377.18
powers and duties	10377.18
power to employ assistants and fix compensations	10377.24
preparation of forms and blanks	10377.18
report to governor	10377.18
witnesses, punishment for contempt	10377.25
Tax, how disposed of	10377.23
Transfers deemed in contemplation of death when	10377.1
Transfers defined	10377.22
Transfers under power of appointment	10377.1
Treasurer's receipt to issue for tax	10377.5
United States taxes, credit allowed for	10377.3
Unpaid taxes, procedure to collect	10377.16
What deductions allowable	10377.1
What transfers are exempt	10377.4
When due	10377.5
When imposed	10377.1
Witnesses, punishment for contempt	10377.25

INITIATIVE AND REFERENDUM

Measures, how certified	103
Measures, how printed	105
Numbering of measures	103
How placed on ballot	103
Quality of paper	105
Title of measures	103

INSANE ASYLUM, STATE

Certificate of discharge as presumptive evidence	5685
Sterilization inmate of. See Eugenical Sterilization Law	1455.1-1455.8
Superintendent, appointment and salary	1415
appointment, assistant	1415
may receive food supplies	1415
removal, procedure	1415

INSANE PERSONS

Powers when incapacity has been judicially determined	5685
certificate from asylum presumptive evidence	5685
effect of restoration to capacity	5685

INSANITY

Proof by preponderance of evidence required when a defense in criminal cases	10728
--	-------

INSECT PESTS

Cost of destruction, how paid	916
Pay of worker exterminating	4502
Purchase and payment for equipment	4503
Tax levy for extermination	4503

INSOLVENCY

Banks. See Banks and Banking.	
Grain warehousemen, department of agriculture may intervene	3589A

INSPECTION

Hides and meat of cattle. See Livestock	3350.1-3350.14
Livestock. See Livestock	3324-3327.2
Scales. See Scales	3575.1-3575.8
Steam boilers, regulation of	2726

INSPECTORS

Water craft	3859
-------------------	------

INSURANCE

Corporations may change insurance on lives of officers	5942.1
County buildings by board county commissioners	4465
Hail. See Hail Insurance, State Board of	350-363.1

INSURANCE COMMISSIONER

See Commissioner of Insurance

INSURANCE COMPANIES

Commissioner may suspend license of agent, when	6124
general powers of commissioner	6124
Duty to report fire premiums received in cities	5126

INTEREST

Rate on school bonds	1224.4
State warrants bear when	180

INTOXICATION

No excuse for crime	10728
to what extent considered	10728

INTOXICATING LIQUORS

Repeal of state prohibition laws	11048.3
Sale to minors, punishment for	11048.1

INVENTORY

State purchasing agent to make	293.2
--------------------------------------	-------

INVESTMENT COMPANIES

See Banks and Banking

INDEX.

[References are to Sections]

IRRIGATION

- See, also, Water and Water Rights
- Sales of state land to United States for1805.56
- how made if within irrigation projects1805.69

IRRIGATION DISTRICTS

- Acreage, taxable area, how fixed 7190-7235A
- procedure for permanent adjudication 7191
- summons, service and publication 7192
- Actions, limitation on time for.. 7231A
- Appropriation of water by commissioners 7174
- Assessments. See sub-title, Taxes and Assessments 7234-7264.9
- Bonds, regulation of issuance
 - board to adopt resolution.... 7216
 - investigation of proposed issue 7216
 - secretary of state to certify when 7218
 - certification of issue, when and how had 7218
 - commission to determine ir-
rigable area 7235B
 - delivery of bonds..... 7215
 - details relating to issuance.... 7212
 - interest rate 7212
 - registration 7212
 - sale of 7212
 - signatures on 7212
 - term of 7212
 - disposal of proceeds of sale.. 7215
 - expenditure without consent
commission forbidden 7220
 - expenses, how defrayed 7224
 - funding bonds. See sub-title,
Refunding Bonds
 - petition for issuance, action
thereon 7210
 - procedure for confirmation by
district court 7211
 - appeals from orders of court. 7211
 - court to make determina-
tion and order..... 7211
 - petition and notice..... 7211
 - provisions of Code Civil Pro-
cedure applicable 7211
 - ratification existing bonds.... 7231A
 - refunding bonds, procedure for
issuance of 7226
 - cancellation other bonds.... 7230
 - form, execution and record.. 7227
 - lien of 7228
 - lien of bonds to refund war-
rants 7229
 - sale of 7230
 - sale of bonds, how conducted.. 7214
 - disposal of proceeds..... 7215
 - secretary of state to certify is-
sue when 7218
 - state engineer to make inspec-
tion of works..... 7224

IRRIGATION DISTRICTS (Con- tinued)

- Commissioners, organization and
meetings 7171
- bond of 7173
- bond of secretary..... 7173
- duties 7174
- interest in contracts forbidden. 7173
- powers 7174
- rules and by-laws, power to
adopt 7174
- salary 7173
- vacancies, how filled..... 7177
- Dams and reservoirs, construc-
tion of 7174
- Elections and qualifications of
electors 7184
- Expenses of bond issues, how de-
frayed 7224
- Expenditures without consent of
commission forbidden..... 7220
- Extension of district, procedure
for 7189A
- adoption of resolution..... 7189A
- errors in procedure, effect of.. 7189A
- order to be entered by court.. 7189A
- petition and hearing..... 7189A
- taxable acreage, owner may
have fixed how..... 7190
- permanent adjudication of.. 7191
- summons, service and pub-
lication 7192
- Limitation time for actions to
attack decrees 7231A
- Meetings of commission..... 7171
- Organized, how..... 7166
- procedure 7166
- Organization of districts to ad-
minister water rights with-
out a water commissioner
act applicable to what water
owners 7264.2
- apportionment of water how.. 7264.5
- development of water..... 7264.6
- districts declared public cor-
porations 7264.9
- establishment of district how.. 7264.3
- purpose of act 7264.1-7264.8
- tax levy 7264.7
- tax limits 7264.6
- what laws applicable..... 7264.4
- Permanent adjudication of acre-
age 7191
- Purchase and lease of water
rights by commission..... 7174
- plans to be formulated and
submitted 7174
- report by irrigation engineer.. 7174
- Purchaser state lands may sign
petition for 1805.93
- Quieting title, commission may
maintain action 7248.5
- Refunding bonds, issuance of.
See sub-title, Bonds.
- State engineer to make inspec-
tion of work..... 7224
- State examiner's fund, contri-
butions to 6014.73

INDEX.

[References are to Sections]

IRRIGATION DISTRICTS (Continued)	
Surveys, commission may make.	7174
Taxable acreage, how determined	7190
Taxes, collection by county treasurer	2172.1
Taxes and assessments	
acreage for taxation, how fixed	7235A-7235B
all lands chargeable alike....	7234
annual tax levy	7235
apportionment when tract divided	7235
limit of levy.....	7235
apportionment, how made....	7234
cancellation of assessments when	7235.1
collection by county treasurer.	2172.1
commission to fix irrigable acreage	7235B
objections by land owners, procedure	7235B
federal contracts, regulation of assessment	7236
irrigable area, how determined	7235A
notice and hearing.....	7235A
resolution fixing	7235A
petition to district court for confirmation	7235A-7235B
omitted assessments, levy of..	7235
pumping costs, apportionment of	7234
purchase of land at tax sale authorized	7248.6
issuance tax deeds.....	7248.7
sale of lands for delinquent taxes, regulation of.....	7248.1
districts may purchase tax sale certificates	7248.2
purchase at tax sale by commissioners	7248.6
revolving fund, creation and use	7248.1
sale of lands by commissioner	7248.4
scope of act.....	7248.8
tax deeds, issuance of.....	7248.3
actions to quiet title....	7248.5
what amount may be levied	7235
United States, commission may make contracts with.....	7174
United States, sale of lands to, how made if within irrigation project	1805.69
Vacancies in commission, how filled	7177
Voting at elections, how regulated	7184
Who may organize, procedure...	7166

IRRIGATION DISTRICTS UNDER PUBLIC SERVICE COMMISSION	
Annual administrative expense to be determined	3974
Bonds, form and term.....	3968
exemption from taxation....	3970

IRRIGATION DISTRICTS UNDER PUBLIC SERVICE COMMISSION (Continued)	
Bonds (Continued)	
legal investments	3968
lien of	3970
sale of	3969
to be delivered to contractor.	3969
Contents of petition.....	3956
Determination annual administrative expense	3974
Delivery of bonds to contractor.	3969
Directors, election and term....	3990
bond	3990
organization	3990
District court to consider estimate	3956
Final report of commission....	3965
Form of bond	3968
Interest from what funds payable	3974
Levy of taxes, how made.....	3974
Liability of district for payment of bonds	3970
Limitation of powers of directors	3975
Map to accompany petition....	3956
Meetings of directors.....	3960
Payment of bonds.....	3970
Preliminary examination	3956
Preliminary expense, payment of	3956
Procedure for organization of...	3956
Sale of bonds.....	3969
Sinking fund to be provided....	3973
Tax levy to pay bonds.....	3973
levy, how made.....	3974
lien of	3974

ITINERANT VENDORS	
License of. See Taxation.....	2421.16-2421.23

JACKASSES	
Running at large, when prohibited	3400.1

JAILS	
Establishment by county commissioners	4465
Federal prisoners to be received in	12472.1
payment for support.....	12472.2

JANITORS	
Salary capitol janitors.....	439

JOINT SCHOOL DISTRICTS	
See Schools Public: Sub-title, Joint School Districts.1036.1-1037.5	

JUDGES	
Additional judge appointed for sixteenth district	8813.1
Disqualification of when and how effected	8868
grounds for	8868

INDEX.

[References are to Sections]

JUDGES (Continued)

Disqualification of (Continued)	
other judge called in, when....	8868
time for filing affidavit.....	8868
Election judges, how appointed.	587
number of	588
Jurisdiction to enter orders at chambers	8867.1

JUDGMENTS

Appeals taken to supreme court from when	9732
Judgment-roll, contents and filing	9409
Judges may render at chambers when	8867.1

JUDGMENT-ROLL

Contents and filing.....	9409
--------------------------	------

JUDITH BASIN COUNTY

Boundaries of	4327
---------------------	------

JURIES

Numbers of challenges allowed state in criminal cases.....	11956
--	-------

JURISDICTION

Acquired by service of summons in actions to quiet title....	9487
Courts in juvenile delinquent cases	12280
District judges at chambers....	8867.1

JURY SERVICE

Exemption of members national guard from	1401
--	------

JUVENILE DELINQUENTS

Procedure on arrest of.....	12280
jurisdiction of courts.....	12280

KEROSENE

Standards of	3913.7
--------------------	--------

KOOTENAI RIVER

Regulation fishing in	3694
-----------------------------	------

LABELS

Pasteurization label, penalty for misuse	3572.7
--	--------

LABOR

See Workmen's Compensation Act	2837-2990A
Hours of members fire departments	5138
Preferential employment soldiers and sailors when.....	5653

LAKE COUNTY

Boundaries of	4327.1
---------------------	--------

LAND

Ownership by aliens. See Alien Land Law.....	3043.1-3043.8
--	---------------

LAND (Continued)

State land. See Department of State Lands and Investments	1805.1-1805.123
---	-----------------

LAND COMMISSIONERS, STATE BOARD OF

Composition and duties.....	1805.3
Forest fire control by. See Forester, State	2778.1-2778.8
May authorize purchase state general fund warrants when	1912
Redemption of bonds, duty to permit	1916

LAND GRANTS

Acceptance of by state.....	1805.113
-----------------------------	----------

LAW ENFORCEMENT FUND

Transferred to attorney general.	206.1
how used	206.2

LAW JOURNALS AND REPORTS

How contracted for by state purchasing agent	293.6
--	-------

LEASES

In probate proceedings, order for, how obtained	10256
Railroad equipment and rolling stock	6537
State lands. See Department of State Lands and Investments	1805.20-1805.37
State oil and gas lands. See Oil and Gas Lands, State.....	1882.1-1882.24

LEGISLATIVE ASSEMBLY

Property	
sergeant-at-arms to inventory.	78.1
custody of	78.2
duty of purchasing agent...	78.3
inventory and sale, how....	78.2
penalty for removal.....	78.4

LETTERS OF CREDIT

Banks may issue	6014.74
-----------------------	---------

LIABILITY

Bank stockholders	6014.21
-------------------------	---------

LIBRARIAN

County, appointment and qualifications	4565
--	------

LIBRARIES

Gifts and donations, power to receive	5044.1
Historical library. See Historical Society of Montana ..	1560.1-1560.14

LICENSE TAXES

See Taxation	
--------------	--

INDEX.

[References are to Sections]

LICENSES

Agricultural seeds warehousemen	3592.1
Automobiles. See Motor Vehicles: Sub-title, Registration	
.....	1755-1763.21
Billiard and pool halls by cities.	5039.1
Building and loan association agents	6355.17
Butchers	3350.8
Creameries, butter and cheese factories	3569-3569.1
Dairy products, license for producers of	3282
Dealers in farm products	3649.1
Farm warehousemen	4138.2
Fishing licenses. See Fish and Game Laws	3681-3691
Game farms	3777
Gasoline manufacturers and dealers	3913.2
Grain warehousemen	3589
Granting by county commissioners	4465
Guides	3745
Hunting licenses. See Fish and Game Laws	3681-3691
Ice-cream factories	3569
Insurance agents, commissioner may suspend when	6124
Meat peddlers	3350.8
Milk or cream buying or collecting stations	3569.1
Motor transportation companies.	3858.8
Private fish-ponds	3695
Soft-drink establishments by cities	5039.1
Stock coming into state to graze	2087.1-2087.5
Taxes collected by state board of equalization	2122.19
Taxidermists	3751
Water craft	3875

LIENS

Corporation license tax	2344.11
Costs allowed on foreclosure of threshermen's liens	9799
County commissioners to release seed liens when	1805.111
Federal tax liens	2154.1-2154.7
Limitation of actions to foreclose	8370
Mechanic's lien, who may obtain	8339
Oil and gas wells, liens on	8375
filing and enforcement	8377
procedure to enforce	8385
Personal property taxes a lien..	2153
mortgage owners may request separate assessment when.	2153
Priority of threshermen's and seed liens over mortgages..	8275
Slashings lien	2778.7
State has for payment state lands	1805.81

LIFE INSURANCE COMPANIES

Bonds, investment in when authorized	6269
Mont. Code Supp.—74	

LIFE INSURANCE COMPANIES (Continued)

By-laws may provide for participation	
stockholders in election	6258.1
revocation by-laws forbidden.	6258.2
Contingent reserve, creation of..	6280
amount to be invested in....	6280
Investments, how regulated....	6269
in what securities to be made.	6269

LIGHTING

Streets, special improvement district for	5259-5271
---	-----------

LIMITATION OF ACTIONS

Actions for cancellation patents for state land	1805.97
Against railroads to recover excess charges	3808-3808.1
Foreclosure of threshermen's liens	8370
To attack decrees in irrigation district matters	7231A

LIVESTOCK

Barbed wire fences declared nuisance when	3376.1-3376.4
Bounties for killing wild animals. See Bounties	3407.1-3407.3
Bulls, running at large, regulation of	3403
in herd districts	3385
Butchers defined	3350.7
license required	3350.8
Cruelty to, what facts must be proved	11515A
Damages for trespassing stock, marking boundaries	3382
Estrays, publication description of	3338
disposal of proceeds	3338
duty of shipper to make tally list	3341
duty of railroads	3341
penalty for violation act..	3341.1
Governor may prohibit importation diseased	3267.1
penalty	3267.2
Herd districts. See Herd Districts	3385
Hides. See sub-title, Inspection of hides and meat	
Increase of mortgaging	8290.1
Inspection of, cattle, power to seize stolen	3327.1
Inspection of cattle on transfer from one county to another	3324
power of livestock commission	3324
Inspection of hides and meat	
butcher defined	3350.7
certificate of inspection	3350.10
hides and beef before sale required	3350.1
penalty for falsifying	3350.2
other penalties	3350.3

INDEX.

[References are to Sections]

LIVESTOCK (Continued)

Inspection of hides and meat (Continued)	
hides, mutilation or concealment forbidden	3350.4
penalty for	3350.5-3350.6
purchasers hides must have same inspected	3350.1
inspection hides and meat required	3350.9
exception	3350.9
certificate of inspection	3350.10
purchase without inspection unlawful	3350.11
stamping of hides and meat required	3350.9
exception	3350.9-3350.14
Jackasses, prohibition against running at large	3400.1
License of butchers and meat peddlers	3350.8
forfeiture, when	3350.12
penalty	3350.13
License tax on, when brought into state to graze	2087.1
Livestock commission fund, how appropriated	3257.1
Marking boundaries, when necessary to maintain action for trespassing stock	3382
Meat, inspection of. See subtitle, Inspection of hides and meat	3350.1-3350.14
Meat peddler defined	3350.7
license required	3350.8
Quarantine against importation diseased animals	3267.1
Ridgelings, prohibition against running at large	3400.1
Running at large of certain animals prohibited	3400.1-3400.3
bulls, regulation of	3403
effect partial invalidity act	3400.6
may be killed, when	3400.4
limitation on right to kill	3400.5
notice to owners required	3400.3
public nuisance	3400.2
procedure for taking up	3400.3
Stock inspectors may seize stock when	3327.1
disposal of property	3327.2

LIVESTOCK COMMISSION

See Livestock	
Duties as to bounties. See Bounties	3407.1-3407.11
Duties as to destruction wild animals	3417.1-3417.3

LIVESTOCK SANITARY BOARD

To administer laws relating to sanitary inspection of dairies	3568
---	------

LOCAL IMPROVEMENT DISTRICTS

Letting of contracts	1686
conditions of same	1686

LOGGING

See State Forests	1830.1-1830.10
-------------------------	----------------

MACHINERY

Regulation of moving on highway	1749
---------------------------------------	------

MANDAMUS

Peremptory writ to be awarded when	9858
damages and costs	9858

MAPS

Official state map, designation of	3847.1
custody of plates	3847.2
distribution	3847.3

MARIAHUANA

See Opiates	3186-3202.2
-------------------	-------------

MARKETING

See Co-operative Marketing	6445-6449.7
----------------------------------	-------------

MAXIM SILENCERS

Prohibition, use in hunting	3694
-----------------------------------	------

MECHANICS' LIENS

Who entitled to	3339
-----------------------	------

MEDICAL AID

Furnished school children, when	1015
---------------------------------	------

MEDICINE

Fee of candidates for examination	3123
Medical board fund	3124
Per diem of members of medical board	3124
rate of mileage	3124
Reciprocity provisions	3123

MERCHANTS

License of traveling dealers. See Taxation	2421.1-2421.8
--	---------------

MERGER OF CITY AND COUNTY GOVERNMENT

Advertising of contracts when necessary	5520.75
Advisory board, appointment of	5520.42
Alteration of contracts	5520.76
Amendment of initiative and other petitions	5520.31
Assessor, appointment of	5520.52
powers	5520.53
Attorney, how appointed	5520.44
Audit and account, division of	5520.47
duty to audit officer's accounts	5520.48
Ballots, form of	5520.4
Ballots title on referendum petition	5520.27

INDEX.

[References are to Sections]

MERGER OF CITY AND COUNTY GOVERNMENT (Continued)

Ballots, party designation on forbidden	5520.94
names may be written on	5520.96-5520.98
order of names, how determined	5520.95
Body politic, designation as....	5520.6
Bond of depositories of funds....	5520.64
Bond of commissioner and other officers	5520.112
Borrowing money	5520.73
Chief of police.....	5520.77
Claims, how paid.....	5520.60
examination of	5520.61
Commission, membership and term	5520.7
absences, forfeiture of office for	5520.13
bond of	5520.112
clerk	5520.11
compensation	5520.13
county board of health.....	5520.81
forbidden to hold other offices	5520.111
meetings	5520.8
ordinances, how enacted.....	5520.14
organization	5520.8
powers generally.....	5520.9
powers to investigate affairs.....	5520.43
president and officers, election of	5520.10
qualifications	5520.7
quorum and voting.....	5520.12
recall petition for removal of.....	5520.99
rules, power to make.....	5520.9
sessions, manager to attend.....	5520.37
vacancies, how filled.....	5520.7
Contracts, alteration of.....	5520.76
Contracts, how let.....	5520.75
to be certified by director of finance	5520.62
void when.....	5520.63
Control of administrative service	5520.35
County attorney, designation and qualifications	5520.44
Debt limit.....	5520.72
Department of law, duties of director	5520.44
Departments enumerated.....	5520.38
Depositories, designation of.....	5520.64
bond	5520.64
new bond, when required.....	5520.66
deposit of funds in.....	5520.68
deposit of securities by.....	5520.65
interest on deposits.....	5520.69
interest on securities.....	5520.65
surety bonds, term of.....	5520.67
Director of finance, powers and duties	5520.45
duties as to revenue and expense	5520.46
examination of claims by.....	5520.61
Director of department of public health.....	5520.80

MERGER OF CITY AND COUNTY GOVERNMENT (Continued)

Director of public works, powers and duties.....	5520.78
Disbursement of moneys by check	5520.70
Division of assessment	5520.52
Division of audit and account.....	5520.47
Division of purchase and supplies	5520.50
purchasing agent	5520.50
Division of treasury, duties.....	5520.49
Effect partial invalidity act.....	5520.120
Election for choosing commission proclamation	5520.5
Elections, municipal primary.....	5520.90
Election on passage ordinance, when necessary	5520.17
Employees, how regulated.....	5520.39
lists to be kept by director of finance	5520.40
Enumeration of departments.....	5520.38
changes in.....	5520.38
Existing contracts continued.....	5520.115
Existing ordinances continued.....	5520.116
Existing officers temporarily continued	5520.117
Fire department chief.....	5520.82
Firemen's disability fund.....	5520.83
First election, what officers to act	5520.89
Fiscal year, designation of.....	5520.54
Franchises, how granted.....	5520.17
Funds deposit of.....	5520.68
Health board.....	5520.81
Initiative petition, submission of	5520.20
Initiative repealing ordinances.....	5520.24
Interest on deposits.....	5520.69
Law department. See sub-title, Department of Law	
Legal status of municipality.....	5520.118
Liability of treasurer and sureties	5520.71
Limitation of indebtedness.....	5520.72
Manager, appointment and powers	5520.32
appointment advisory board.....	5520.42
appointment of officers by.....	5520.33
compensation	5520.32
duties generally.....	5520.36
duty to attend sessions of commission	5520.37
removal	5520.32
Merger, when effective.....	5520.118
Money, how disbursed.....	5520.70
Municipal superintendent of schools	5520.84
Nominating petitions for municipal elections	5520.91
Nominations for commission, how made.....	5520.5
filing petition.....	5520.93
form of petition.....	5520.92
party designation forbidden.....	5520.94
Notice of primary election.....	5520.97

INDEX.

[References are to Sections]

MERGER OF CITY AND COUNTY GOVERNMENT (Continued)

Oath of officers.....	5520.113
Officers of commission, election of	5520.10
Officers, how removed.....	5520.34
accounts, how audited.....	5520.48
interest in contracts forbidden	5520.114
political solicitation prohibited	5520.108
other political activities prohibited	5520.109
Officers, limitation on acceptance fees	5520.107
Ordinances, how enacted.....	5520.14
changes in ordinances, submission to voters.....	5520.21
certification by clerk, submission to voters.....	5520.22
effective, date of.....	5520.17
effective, date of initiative ordinances	5520.23
election on, when necessary.....	5520.17
initiative petition, submission of	5520.19
initiative repealing ordinances	5520.24
publication of.....	5520.15
recording and publication.....	5520.18
referendum petitions on.....	5520.25
revision of.....	5520.16
submission by petition, procedure	5520.19
Petition for, signing and filing.....	5520.2
form and certification.....	5520.3
form of ballots.....	5520.4
Political solicitation forbidden.....	5520.108
Powers of consolidated municipality	5520.6
how exercised.....	5520.6
President of commission, election and powers.....	5520.10
Primary elections, municipal.....	5520.90
names, how placed on ballot.....	5520.98
notice of.....	5520.97
Police court and judge.....	5520.85
Police department.....	5520.77
chief of police.....	5520.77
director, powers.....	5520.77
Public works, how constructed.....	5520.86
control of.....	5520.88
Preliminary acts prior to election	5520.28
Purchasing agent.....	5520.50
Quorum of commission.....	5520.12
Recall petitions, signatures on.....	5520.29
Recall of commission, procedure.....	5520.99
contents of petition.....	5520.100
effect of recall election.....	5520.104
election on.....	5520.101
limitation on recall petitions.....	5520.106
question to be submitted.....	5520.102
resignation pending election.....	5520.105
use of voting machines prohibited	5520.103

MERGER OF CITY AND COUNTY GOVERNMENT (Continued)

Referendum petitions on ordinances	5520.25
amendment of.....	5520.31
ballot title.....	5520.27
certification of petition.....	5520.26
filing and certification.....	5520.30
reconsideration of ordinance.....	5520.26
signatures on.....	5520.29
submission to electors.....	5520.25
suspension of ordinance.....	5520.25
voting upon.....	5520.27
Removal of officers, procedure.....	5520.34
Salary of employees.....	5520.41
Salary withheld when.....	5520.40
Sinking fund board, investments	5520.74
Special improvement districts.....	5520.87
Superintendent of schools.....	5520.84
Supplies, how purchased.....	5520.51
Taxation, limit of levy.....	5520.55
collection of taxes.....	5520.58
continuation special districts.....	5520.59
limit applies to what.....	5520.56
special taxing districts, designation of.....	5520.575
special tax levy.....	5520.57
Transfers authorized.....	5520.119
Treasury division, powers and duties	5520.49
Treasurer and sureties, liability of.....	5520.71
Treasurer to make monthly statement	5520.69
Voting machines, use on recall elections prohibited.....	5520.103
Vouchers for claims required.....	5520.61
When merger is authorized.....	5520.1

MESCAL BUTTON

Possession or sale forbidden....	3202.1
penalty	3202.2

MILEAGE

Allowed public officers for use of automobile.....	4884.1
Allowed to sheriff.....	4916
Medical board, rate of.....	3124

MILITIA

Exemption members from jury duty and poll tax.....	1401
Spanish-American war fund, disposal of	1373.1

MILK

See, also, Dairying and Dairy Products	
Cleansing of containers required	3572.1
penalty	3572.2
Pasteurization of, when required. See Pasteurization....	3572.3-3572.8
Regulation sale of skimmed milk	2628
Sampling, regulation of.....	3570.2
Standard measure for.....	3571

INDEX.

[References are to Sections]

MILK AND CREAM BUYING STATIONS

License of.....	3569-3569.1
Regulation of operation.....	3570
Stations, how located and equipped	3570
Unsanitary operation forbid- den	3570
inspection authorized.....	3570

MINER'S CONSUMPTION

See Tuberculosis Sanitarium....	1520
---------------------------------	------

MINES

Coal. See Coal Mining.....	3504-3524
Leases of state mineral lands. See Department of State Lands and Investments....	1805.48-1805.51
Metalliferous mines license tax. See Taxation.....	2344.1-2344.17
Net proceeds, tax on. See Taxa- tion	2089-2096.1

MINISTERS

Cannot be examined as witnesses when	10536
--	-------

MINK

Open and closed season for hunting	3704
--	------

MINORS

Prohibition attendance at public dances	11039.1
Sale of intoxicating liquor to prohibited	11048.1
definition of intoxicating liquor	11048.2

MISSOURI RIVER

Regulation fishing in.....	3694
----------------------------	------

MONEYS

See, also, Funds	
City and county money, how deposited	4767
County high school trustees may issue funding bonds on fail- ure banks when.....	1254.9-1254.16
School trustees may issue war- rants on failure of banks when	1254.1-1254.8
State fund, how deposited.....	182

MONOPOLY

See Conspiracy.....	10904
In purchase dairy products. See Discrimination	2630-2631

MONTANA UNIVERSITY

See University of Montana....	852-860
-------------------------------	---------

MONUMENT

Erection on capitol grounds authorized	319.1
--	-------

MORPHINE

See Opiates.....	3186-3202.2
------------------	-------------

MORRIS PLAN COMPANIES

Amount of capital stock re- quired	6109.4
Certificate of incorporation, con- tents	6109.3
Definition of term.....	6109.1
Deposits, powers concerning....	6109.8
Directors to reside in state....	6109.10
Name of corporation.....	6109.6
Population required.....	6109.4
Powers of corporation.....	6109.7
restriction on	6109.9
Procedure to establish.....	6109.2
Shares, how divided.....	6109.5
Supervision by state banking department	6109.11

MORTGAGES

Assignments of real estate mort- gages	8259
filing of.....	8259
Chattel mortgages	
advances, mortgage may se- cure	8275
priority of threshermen and seed liens.....	8275
increase of livestock may be included	8290.1
what interest in property may be mortgaged.....	8275
Corporate mortgages, where re- corded	8273
affidavit of good faith.....	8273
Penalty for removing or selling mortgaged property.....	8291
Railroad equipment and rolling stock	6537
Separate assessment of personal property may be had when	2153
State farm loans on amortization plan	1928A
conversion of.....	1928B-1932B

MOTHERS' PENSION ACT

Allowance when and to whom made	10482
how procured.....	10482

MOTOR VEHICLES

See, also, Automobiles	
See, also, Traffic Regulations	
Accidents, duty of driver to re- port	1744.1
Alteration engine number, pen- alty for.....	1763.15
Alteration or forgery certificate title	1763.12
Auto theft fund, creation of....	1763.17
how used.....	1763.18
Certificates of title, duty to pro- cure	1763.2
contents of certificate.....	1763.2
dealers' and manufacturers' certificates	1763.10

INDEX.

[References are to Sections]

MOTOR VEHICLES (Continued)

Certificates of title (Continued)	
definition of terms.....	1763.1
duty of licensed dealer selling car	1763.3
fee for certificate.....	1763
new certificate, when required	1763.3
penalty for false statement....	1763.9
penalty for operating car without	1763.4
refusal or revocation of when	1763.8
sale of car, new certificate required	1763.3
County treasurer to make list delinquent owners.....	1759.2
Dealers, duty on selling car....	1763.3
Dealers' licenses	1760
Dealers, second hand, licensing of	1763.14
Dealers to give purchaser bill of sale	1763.16
Duplicate registration certificates to be procured when.....	1763.11
fee for.....	1763.11
Engine number, penalty for altering	1763.15
False statements perjury when.....	1763.20
Fees, schedule of license fees..	1760
for duplicate certificates....	1763.11
how disposed of.....	1760
what fees affected by act....	1760.1
Forgery, acts constituting.....	1763.20
Forgery certificates of title, penalty for.....	1763.12
Licensing of. See sub-title, Registration	
Number plates manufacture of at prison	12447.5
Partial invalidity act, effect of.....	1763.21
Penalty for false statements in application	1763.9
fraudulent transfer.....	1763.9
operating without certificate of title.....	1763.4
sale with altered engine number	1763.15
Records open to inspection.....	1763.19
Registration of	
certificate of title, applicant to procure	1763.2
contents of registration receipt	1763.5
dealers' and manufacturers' certificates	1763.10
exemptions from act.....	1760
information required on application	1759.1
inspection of registration receipts	1763.5
late registration, regulation of	1759.4
penalty for	1759.4
number plates to be procured.....	1763.5
old certificates to be returned when	1763.6
penalty for false statements in application.....	1763.9

MOTOR VEHICLES (Continued)

Registration of (Continued)	
procedure when property tax delinquent	1759.3
refusal and revocation of certificates	1763.8
registration receipt, contents and issuance.....	1763.5
procedure on transfer of ownership	1763.6
sale of car, disposal of old certificate	1763.6
schedule of license fees.....	1760
how disposed of.....	1760
warden penitentiary ex-officio registrar	1755
bond	1755
duties	1755
employees	1755
lists of licenses, duty to make	1755
Schedule of license fees.....	1760
Second-hand dealers' licenses....	1763.14
Sheriff, duties as to stolen cars.....	1763.13
Stolen cars, report of to be made	1763.13
Theft fund, creation and use.....	1763.18
Traffic regulations. See Traffic Regulations	
Transportation companies, regulation of. See Railroad Commission	3858.1-3858.11
Warden of penitentiary registrar	1755

MOUNTAIN LIONS

Bounty on.....	3407.1
----------------	--------

MUNICIPALITIES

See Cities and Towns

MUSKRAT

Open and closed season for hunting	3704
destroying houses of forbidden	3704

NAMES

Registration of dairymen.....	2629
-------------------------------	------

NARCOTICS

See Opiates.....	3186-3202.2
------------------	-------------

NATIONAL COMMITTEEMAN AND COMMITTEEWOMAN

See Committeemen.....	662-663
-----------------------	---------

NATIONAL CONVENTIONS

Election of delegates to. See Elections: Sub-title, Presidential Electors.....	673.1-673.8
--	-------------

NATIONAL GUARD

Exemption from jury duty and poll tax.....	1401
--	------

NEGLIGENCE

Cities not liable for when.....	5086.1
---------------------------------	--------

INDEX.

[References are to Sections]

NEGOTIABLE INSTRUMENTS ACT

- Additional provisions which do not affect negotiability..... 8412
- Time limit for presentation checks6014.81-8593.1

NET PROCEEDS TAX

- Mines2089-2096.1

NEW COUNTIES

- See Counties.....4396.1-4403

NEW SCHOOL DISTRICTS

- Procedure to create..... 1024

NEWSPAPERS.

- Constitutional amendments, how published 537.1
- Publication proceedings board county commissioners..... 4465

NOMINATIONS

- See Elections: Sub-title, Primary Nominating Elections.....632-731
- Certificates, when and where filed 618
- Certification of names..... 619
- Declining of nominations..... 620

NORMAL SCHOOLS

- Eastern Montana State Normal School930.1-930.6
- Training, when required of teachers 1102

NORTHERN MONTANA AGRICULTURAL AND MANUAL TRAINING SCHOOL

- Control of..... 918
- Declaration of purpose..... 917
- Executive board, creation and powers 921
- duties 921
- to make study and report.... 921.1
- Fund created..... 921
- Location certain departments at Havre 921

NUISANCES

- Abandoned horses declared..... 4520.2
- Barbed wire fence declared when 3376.1
- Uncontrolled fires declared..... 2778.2

NURSING

- Nurses to renew certificates when 3211A
- fee for 3211A
- Requirements for applicants for registration 3210
- registration fee..... 3210
- Training schools, requirements of 3210

OCULISTS

- See Optometry.....3156-3167

OFFICERS

- Cannot be examined as witnesses when 10536
- County commissioners may regulate appointment and salary deputies 4874
- County officers not to receive fees for own use..... 4864
- salaries, how paid..... 4864
- Exempt from payment costs and damages 9810
- Interest in contracts for state purchases prohibited..... 293.12
- Limitation expenses attending conventions 443
- Mileage for use of private automobiles 4884.1
- Sinking fund, duty to provide.. 463.1
- county attorney to prosecute.. 463.3
- penalty for misappropriation.. 463.2
- Special deputy county health officers 4527
- State officers to file itemized expense accounts. See Examiners, State Board of: Sub-title, Expense Accounts.... 458.1-458.6
- State officers to make property statements to purchasing agent 293.1

OFFICES

- County superintendent of schools, when to be kept open..... 974

OFFICIAL BONDS

- Examiners of banks.....6014.57
- Grain warehousemen..... 3589
- agricultural seeds warehousemen 3592.2
- Itinerant vendors2421.19
- Lessees of oil and gas lands.... 1882.9
- On lease of state lands.....1805.29
- On coal land leases.....1805.42
- Purchasers state timber..... 1830.5
- State forester..... 1830.3
- Superintendent of banks.....6014.56
- Surety companies accepted on official bonds 6236
- premiums, how paid..... 6236
- Transient retail merchants..... 2421.4

OIL

- See, also, Gasoline
- Distributors' and dealers' license tax. See Taxation....2382-2396.20

OIL AND GAS

- Conservation of, promulgation of rules 3547.1
- Oil and gas wells not public utilities 3547.4
- Penalties for violation act..... 3547.3
- Railroad commission to administer act 3547.2
- may require aid from United States bureau mines..... 3547.2

INDEX.

[References are to Sections]

OIL AND GAS LANDS, STATE

Advertising of re-leasing.....	1882.15
Approval of amendatory enabling act	1882.13
Assignments of leases permitted.....	1882.16
Authority of board of land commissioners	1882.27
Board of land commissioners may correct errors.....	1882.14
authority of board.....	1882.7
may lease lands.....	1882.1
Bond required.....	1882.9
Cancellation of leases when....	1882.6
Disposal of royalties.....	1882.12
Drilling conditions.....	1882.11
Effect partial invalidity act....	1882.23
Existing lessee's rights protected	1882.8
Extending time for commencing drilling	1882.6
Filing fees.....	1882.3
Forfeiture and cancellation of leases	1882.10
Improvements, disposal on termination lease.....	1882.17
Interest by board or employees forbidden	1882.20
Leases to be in compact bodies.....	1882.3
Leases, term of.....	1882.2
limitations and regulations....	1882.2
Offset wells to be drilled.....	1882.19
Penalty for false statements....	1882.22
Penalty for violation act.....	1882.21
Prevention of waste, condition of lease.....	1882.21
Ratification existing leases.....	1882.8
Releasing, conditions of.....	1882.15
Rentals, amount of.....	1882.3
Repealing clause.....	1882.24
Report by lessees required.....	1882.5-1882.19
Reservation of surface rights by state.....	1882.1
Royalties, amount of.....	1882.1
payment of.....	1882.5
Royalties of holder of mortgaged lands	1882.1
Royalties, payment and disposal of	1882.12
Term of lease.....	1882.2
Termination of lease by lessee	1882.18

OIL AND GAS WELLS

Lien on, who entitled to.....	8375
filing and enforcement of lien	8376
procedure to enforce.....	8377

OIL SHALE

Leases of state lands for.....	1805.52-1805.55
--------------------------------	-----------------

OLD AGE PENSION ACT

Alienation or attachment pension forbidden.....	4541.14
Amount of pension.....	4541.4
Annual income, how computed..	4541.7
Annual report of pension commission	4541.21

OLD AGE PENSION ACT (Continued)

Applicant for, qualifications of.	4541.5
Cancellation of certificate when.	4541.18
Cancellation of pension when..	4541.11
Certificates and renewal.....	4541.9
Claims for, how made.....	4541.8
Commencement of payment....	4541.10
Effect of amendment or repeal act	4541.23
Expenses of act, how paid.....	4541.20
Funeral expenses, payment of..	4541.12
Gender of terms used in act....	4541.24
Hearing, procedure how regulated	4541.22
Income, limitation on amount of	4541.6
Old age pension commission, creation of.....	4541.1
annual report of.....	4541.21
duties and meetings.....	4541.2
Other relief forbidden.....	4541.13
Penalty for falsely procuring..	4541.16
other penalties	4541.17
Qualifications of applicant for pension	4541.5
Suspension of payment when....	4541.19
Suspension of pension improperly obtained	4541.15
Title of act.....	4541.25
Who entitled to pension.....	4541.3

OLEOMARGARINE

Coloring forbidden.....	2627
License of dealers in.....	2622.3
Regulation of sale and use....	2622

OPIATES

Peyote or mescal button, sale forbidden	3202.1
penalty	3202.2
Prescription for sale required..	3186
Sale of certain opiates, regulation of	3186

OPIUM

See Opiates.....	3186-3202.2
------------------	-------------

OPTOMETRY

Board of examiners, creation of	3157
examinations, regulation of..	3159
funds, disposal of.....	3165
meetings of.....	3158
oath of	3157
officers	3158
qualifications	3157
revocation of licenses by....	3166
secretary, duties.....	3158
Certain practices prohibited....	3156
Certificates of registration given	3159
renewal of.....	3161
Examinations, regulation of....	3159
fee for.....	3159
Funds, disposal of.....	3165
Licenses, revocation of.....	3166
second revocation, penalty....	3166A

INDEX.

[References are to Sections]

OPTOMETRY (Continued)

- Penalty for violation act..... 3167
- Prohibition of certain practices. 3156

OSTEOPATHY

- License to practice required.... 3127
- renewal fee..... 3127

OTTER

- Open and closed season for hunting 3704

OUTHOUSES

- At schools, regulation of..... 1015

PARKS AND PLAYGROUNDS

- Cities may incur indebtedness to provide 5159

PAROLE COMMISSIONER

- Office abolished.....12516.1

PARTRIDGE

- Bag and season on..... 3701

PASTEURIZATION

- Ice-cream, milk and cream to be pasteurized 3572.5
- Milk and cream must be pasteurized when..... 3572.4
- Penalty for misuse of label.... 3572.7
- Penalty for violation act..... 3572.7
- Process defined..... 3572.3
- Regulation of operation..... 3572.6

PEDDLERS

- License of. See Taxation..... 2421.1-2421.23

PENITENTIARY

- See State Prison.....12447.1-12447.11
- Warden registrar motor vehicles. 1755

PENSIONS

- See, also, Mothers' Pension Act. 10482
- See Old Age Pension Act.4541.1-4541.25
- See Schools Public: Sub-title, Teachers' Retirement Salary Fund1116-1127
- Fire department pension fund.. 5117
- pension to retired firemen.... 5132

PERJURY

- Bounty claims, acts constituting. 3407.9

PERMANENT COMMON SCHOOL FUND

- Investments, how made...1928A-1932B

PERSONS

- Of unsound mind, powers when incapacity judicially determined 5685
- effect restoration to capacity. 5685

PETROLEUM COUNTY

- Boundaries of 4337.1

PETTY CASH FUND

- County commissioners may set aside 4632

PHARMACISTS

- See Opiates3186-3202.2

PHEASANTS

- Hunting certain varieties forbidden 3700

PIONEERS HISTORICAL SOCIETY

- See Historical Society of Montana1560.1-1560.14

PIPE-LINES

- Grant by counties of right of way for construction..... 4465.1
- proviso 4465.2
- Lien on, who entitled to..... 8375
- filing and enforcement of lien 8376
- procedure to enforce..... 8385

PHYSICIANS

- See Medicine3123-3124
- Cannot be examined as witnesses when 10536

PODIATRY

- Definition of 3154.1
- Exemption from act.....3154.10
- Expenses of examining board... 3154.8
- Fee for license..... 3154.5
- License required 3154.2
- recording and renewal..... 3154.5
- revocation, grounds for..... 3154.6
- when granted without examination 3154.3
- Medical board fund, creation... 3154.7
- Penalty for violation act..... 3154.9
- Podiatry board, creation..... 3154.3
- compensation 3154.8
- examinations by 3154.3
- fee for examination..... 3154.3
- requirements of applicants... 3154.3
- subjects of examination..... 3154.4
- Registered podiatrists 3154.5

POISON

- Purchase by counties to exterminate insect pests..... 4503
- Use in taking fish prohibited... 3717

POLICE

- City. See Cities and Towns5096.1-5106

POLL TAX

- Exemption members national guard from 1401

INDEX.

[References are to Sections]

POLITICAL PARTIES

May hold primary nominating elections when 639

POOR

See, also, Old Age Pension Act 4541.1-4541.25
Care of by county commissioners 4465
Contract for medicine and attendance county poor..... 4527

POOR FUND

Validation certain warrants.... 230.1

POUNDS

Disposal of impounded animals, notice 5176

POWER LINES

Assessment of property..... 2122.8

PRESIDENTIAL ELECTORS

Nomination of. See Elections:
Sub-title, Presidential Electors673.1-673.8

PRIESTS

Cannot be examined as witnesses when 10536

PRIMARY ELECTIONS

See Elections: Sub-title, Primary Nominating Elections632-731

PRINTING

County commissioners to contract for 4465
Initiative and referendum measures, how 105
State printing, how contracted for 293.6

PRISONERS

Federal prisoners to be received at county jails.....12472.1
payment for support.....12472.2

PRISONS

See State Prison.....12447.1-12447.11

PRIVATE CORPORATIONS

See Corporations

PRIZE-FIGHTS

See Athletic Commission...4551-4562½

PROBATE PROCEEDINGS

Accounting and settlement of administrators and executors, when compelled..... 10295
Actions on rejected claims, time for bringing 10178
Executors or administrators may be cited to account after discharge 10295

PROBATE PROCEEDINGS (Continued)

Inheritance taxes. See Inheritance Tax10377.1-10377.25
Leases, order for, how obtained 10256
Mortgages and leases of real estate
order to lease, procedure to obtain 10256
order to show cause..... 10251
service of order, assent to petition 10252
Sales of real estate and realty contracts
citation to interested parties to appear 10212
notice of sale, how given.... 10220
service of order to show cause 10213
assent or publication..... 10213
Wills, when admitted to probate 10030
proof required 10030

PROBATION OFFICERS

Investigations by on arrest juvenile delinquent 12280

PROCESS

Fees allowed for service by sheriff 4916
Sheriff to indorse what upon.... 4774

PROHIBITION LAWS

Repeal of11048.3

PROPERTY

Inventory legislative property to be taken 78.1

PROTEST

Payment of taxes under..... 2269

PUBLIC ADMINISTRATOR

Appointment as special administrator to determine inheritance tax10377.17
fees as such.....10377.17

PUBLIC DANCES

Prohibition attendance minors under sixteen.....11039.1

PUBLIC FUNDS

City and county, regulation of deposit 4767
State, how deposited..... 182

PUBLIC INDEBTEDNESS

Qualifications voters on elections 540.1
lists of voters to be posted.. 540.2

PUBLIC OFFICERS

See Officers

PUBLIC PRINTING

How contracted for..... 293.6

INDEX.

[References are to Sections]

PUBLICATION

- Constitutional amendments, how. 537.1
- Proceedings boards of county commissioners 4465
- Supreme court reports.....380-383

PUBLIC SERVICE COMMISSION

- Gasoline manufacturers and dealers, license of. See Gasoline Manufacturers and Dealers3913.1-3913-22
- Irrigation districts organized under control of. See Irrigation Districts.....3956-3990

PUBLIC UTILITIES

- Oil and gas wells not utilities.. 3547.4

PUBLIC WAREHOUSEMEN

- Agricultural seeds warehousemen
- agricultural seeds defined.... 3592.4
- bond required..... 3592.2
- co-operative associations may handle seeds how..... 3592.9
- duty to receive seeds..... 3592.5
- exception from act..... 3592.8
- license required..... 3592.1
- penalty for violation act.... 3592.3
- rules prescribed by commission 3592.6
- storage declared bailment.... 3592.7
- Farm warehouses
- certificates negotiable 4138.4
- commissioner of agriculture to regulate 4138.7
- co-operative associations not affected by act..... 4138.9
- inspector, appointment, compensation, bond..... 4138.5
- reports 4138.6
- sampling by..... 4138.6
- insurance at full value to be carried 4138.8
- license required..... 4138.2
- county clerk to issue..... 4138.2
- right of holder to issue warehouse certificates.. 4138.3
- redemption of storage certificates 4138.7
- storage of grain by..... 4138.1
- who may store grain in.... 4138.1
- Grain warehousemen
- bond of..... 3589
- commissionman defined..... 3574.1
- definition of terms..... 3574.1
- disputes as to grade, how decided 3588
- grain dealer defined..... 3574.1
- insolvency, intervention by department of agriculture.. 3589A
- liability for delivery of grain 3588A
- license to be procured..... 3589
- regulation delivery of grain by 3588-3588B
- reports to be made by..... 3589
- sampling of grain, regulation of 3588

PUBLIC WAREHOUSEMEN (Continued)

- Grain warehousemen (Continued)
- storage of grain deemed bailment3588B-3592.7
- tester of scales to be employed 3575.1
- track buyer defined..... 3574.1
- violation of act, penalty for.. 3589

PUBLIC WATER SUPPLY

- Fees of state board of health, how disposed of..... 2645

PUPILS

- See, also, Schools, Public.
- Transportation to other districts when and how..... 1010

PURCHASING AGENT, STATE

- See Purchasing Department and Agent

PURCHASING DEPARTMENT AND AGENT

- Acts subject to approval of governor293.5-293.7
- Advertisement for bids by..293.3-293.5
- Approval for purchase supplies necessary 293.7
- Articles requiring immediate delivery 293.9
- Board of examiners to order purchases when 287
- Certified checks to accompany bids 259.4
- Contracts to be in name of state 293.11
- Departmental supplies, how purchased 293.5
- Duration of contract..... 293.8
- Estimate of supplies to be furnished 293.7
- Favoritism forbidden..... 293.10
- Fresh fruits and vegetables, how bought 295.9
- Governor to approve purchases293.5-293.7
- Inspection of warehouses and property by..... 293.13
- Inventory contents and preparation 293.2
- Law journals and reports, how contracted 293.6
- Legislative supplies, how purchased 293.5
- Power to sell state property, procedure 293.4
- disposal of proceeds..... 293.4
- Printing, how contracted for... 293.6
- Property returns made to by state officers..... 293.1
- Proposals for furnishing supplies 293.7
- Purchasing agent
- duty to preserve legislative property 78.3
- duty to appraise same..... 78.2

INDEX.

[References are to Sections]

PURCHASING DEPARTMENT AND AGENT (Continued)

Purchasing agent (Continued)	
duty to let contract for publishing state treasurer's report	187.3
limitation on price.....	187.3
Records of bids to be made....	293.11
Reports and journals, how contracted for.....	293.6
Requisitions by department heads	287
State officers not to be interested in contracts.....	293.12
Transfer of contracts forbidden	293.12
Warehouses, inspection of.....	293.13

QUARANTINE

Against importation diseased animals	3267.1
penalty	3267.2

QUIETING TITLE

Evidence to be produced.....	9487
Jurisdiction acquired by service of summons.....	9487
Summons, form of.....	9485
publication of.....	9485

RACCOON

Open and closed season for hunting	3704
--	------

RAILROADS

See, also, Railroad Commission, State	
Assessment of property.....	2122.8-2131
Deposit of substances on or near tracks, penalty for.....	11473.1
Duties as to shipment estray cattle	3341
penalty	3341.1
Equipment and rolling stock, leases and mortgages of, reservation of title.....	6537
Limitation time for action against to recover excess charges	3808-3808.1
Officers to render statement to state board of equalization..	2131
Shipment of game and fish, regulation of	3730-3735

RAILROAD COMMISSION, STATE

Actions to recover excess charges when commenced	3808-3808.1
treble damages, when awarded.	3808
Gasoline manufacturers and dealers, license of. See Gasoline Manufacturers and Dealers	3913.1-3913.22
Inspectors of water craft, appointment of	3859
Map of state designated as official map	3847.1
custody of plates.....	3847.2
distribution and charges.....	3847.3

RAILROAD COMMISSION, STATE (Continued)

Motor Transportation Companies	
appeals from commission.....	3858.7
bond required	3858.6
personal sureties forbidden..	3858.6
certificate of permission.....	3858.4
cities and towns may enact ordinances	3858.3
classes of transportation subject to act	3858.2
definition of terms	3858.1
effect partial invalidity of act	3858.11
expenses enforcement act, how paid	3858.8
permits, granting of.....	3858.4
revocation of	3858.5
penalty for violation of act...	3858.9
procedure before commission..	3858.7
railroad commission to supervise	3858.3
scope of act	3858.10
Oil and gas conservation act, duty to administer.....	3547.2
Safety appliance inspector, salary of	3787

RANGE

Roundup of abandoned horses.	
See Abandoned Horses..	4520.1-4520.16

RATS

Extermination authorized, procedure	2561.1
---	--------

REAL ESTATE

See, also, Real Property	
Aliens may not own.....	3043.2
Mortgaging or leasing in probate proceedings	10251-10256
Sale in probate proceedings....	10212-10220
Validation certain judicial sales of	9453
Who may redeem from sale of...	9442

REAL ESTATE BROKERS

Real estate commissioner, creation of	4056
disposal of fees	4061

REAL PROPERTY

See, also, Real Estate	
Actions to quiet title.....	9485-9487
Trust agreements concerning.	
See Trust Estates....	9575.1-9575.10

RECEIPTS

County receipts to issue in triplicate	4751
--	------

RECORD

Abbreviated record presented on appeal to supreme court when	9746
--	------

INDEX.

[References are to Sections]

RECORDS

Transfer on creation new counties 4402

REDEMPTION

From tax sales by mortgagees and lienholders 2211
Who may redeem from sale of property 9442-9444
redemption by corporation.... 9444
redemption by husband or wife 9444

REFERENDUM

See Initiative and Referendum

REGISTER

Candidates and nominees to be kept 645

REGISTRATION

Automobiles. See Motor Vehicles: Sub-title, Registration 1755-1763.21
Closing for school bond elections 1224.12
Hail insurance warrants..... 355
State warrants when..... 180

REGISTRAR MOTOR VEHICLES

See Motor Vehicles
Duties concerning manufacture automobile tags. See State Prison 12447.5-12447.11
Concerning factory for manufacture clothing. See State Prison 12447.1-12447.4

REHABILITATION

See Vocational Rehabilitation... 3051.1-3051.3

RELIGIOUS, SOCIAL AND BENEVOLENT CORPORATIONS

Articles of incorporation, contents 6455
Directors or trustees, number and powers 6455
Incorporation of authorized.... 6453
Resolution of incorporation, form and passage 6454

REPORTS

Banks. See Banks and Banking
County clerk, annual report..... 4814
State examiner 210
to be entered by county commissioners 210.1
Supreme court. See Supreme Court Reports 380-383
Tax commission 2122.8

REQUISITIONS

By department heads for state purchases 287

RETIREMENT FUND

See Schools, Public: Sub-title, Teachers' Retirement Salary Fund 1116-1127

REVISED CODES OF 1921

Adoption of 5546.1
Changes legalized 5546.2
Exceptions.. 5546.3

REVOLVING FUNDS

Department of Agriculture revolving appropriation account 3645
Horticultural revolving fund.... 3617.1

RIDGELINGS

Running at large when prohibited 3400.1

RIGHT OF WAY

Grant by counties for pipe-line construction 4465.1

ROAD BUILDER

County Commissioners may employ 1622

ROAD DISTRICTS

Bridges, county and district.... 1652
Corporate capacity and purpose.. 1652
County commissioners may create 1622
Special deputy county surveyor appointed, when..... 1652

ROAD SUPERVISOR

Abolished in certain county.... 1622.2
County commissioners may appoint 1622

ROADS

See Highways

ROCKY MOUNTAIN SHEEP AND GOATS

Penalty for hunting..... 3699

ROCKY MOUNTAIN SPOTTED FEVER CONTROL FUND

Creation and use..... 2561.2

RODENTS

Act supplemental 2561.6
Control by county commissioners authorized 2561.1
Control districts, establishment of 2561.1
Purchase of material 2561.4
Report and pay of appointee.... 2561.3
Rodents defined 2561.5
Spotted fever control fund..... 2561.2

ROUNDUP LAW

See Abandoned Horses... 4520.1-4520.16

INDEX.

[References are to Sections]

ROYALTIES

Disposal proceeds oil and gas royalties1882.12

RURAL SCHOOL DISTRICTS

See Schools, Public: Sub-title,
Rural School Districts....1040-1048

SAFETY APPLIANCE INSPECTORS

Salary senior inspector..... 3787

SAGE-HEN

Bag and season for hunting..... 3701

SALARIES

Capitol guides 439
Chairman state board hail insurance 363
Commissioner and assistant commissioner state lands.....1805.14
County attorney, how paid..... 4868
County clerk withheld when.... 4814.1
County officers, how paid..... 4868
Court stenographers 8933
Deputy county officers, how fixed 4874
Deputy fish and game wardens 3656-3661
Deputy state auditor..... 440.4
Deputy secretary of state..... 440.2
Deputy state treasurer 440.3
Deputy insurance commissioner.. 440.5
Engineer at state capitol..... 439
Establishment by board county commissioners 4465
Examiners of banks.....6014.59
Fish and game commission..... 3654
Fish and game warden 3655
Janitor at state capitol..... 439
Senior safety appliance inspector 3787
State board of equalization.... 2122.2
State forester 1830.3
Stenographer to supreme court.. 440.1
Superintendent of banks.....6014.59

SALES

Property by guardians, service of order of assent..... 10434
Railroad equipment and rolling stock 6537
Real estate in probate proceedings10212-10220
Return of sales of real estate under decree 9441.1
Trust property, court may authorize, when 9575.1
Validation certain judicial sales.. 9453

SAND

Leases of state lands for..... 1805.52-1805.55

SANITARIUM

See Tuberculosis Sanitarium..... 1520

SAVINGS BANKS

See Banks and Banking

SCALES

Exception from repealing clause 3575.8
Fees collected by state scale expert 3575.2
Inspection required 3575.5
special permit granted, when.. 3575.6
Penalty for false test..... 3575.7
State scale expert, employment of 3575.1
bond of 3575.1
certificate of test..... 3575.4
duties 3575.1
expenses, how paid..... 3575.3

SCALING TIMBER

Regulation on timber sales..... 1830.8

SCHOOL BONDS

See Schools, Public: Sub-title,
Bonds1224.1-1224.34

SCHOOLS, PUBLIC

Bonds
amount, limitation on..... 1224.2
amortization bonds to be issued 1224.3
ballots, preparation and form 1224.11
calling of election1224.10
canvass of returns 1224.15
county attorney, duties of...1224.23
county commissioners, liability for failure to make levy..1224.27
county treasurer to keep record of funds1224.28
duties of1224.29
closing of registration.....1224.12
dates of issues and payment.. 1224.5
elections, how conducted.....1224.13
effect partial invalidity act....1224.33
exchange for amortization bonds 1224.7
form of bonds.....1224.3-1224.19
form of notice of sale.....1224.16
publication of1224.17
for what purposes issued..... 1224.1
how many voters required to authorize1224.14
interest rate 1224.4
issued without holding election when 1224.6
liability of district on bonds.. 1224.24
meeting of trustees to consider petition1224.10
notice of election.....1224.10
notice of sale, form of.....1224.16
payment for bonds.....1224.22
payment of principal and interest1225.25
payment of bonds by county treasurer1224.29

INDEX.

[References are to Sections]

SCHOOLS, PUBLIC (Continued)

Bonds (Continued)

payment of bonds held by state	1224.30
entry of payment and notice to clerk	1224.31
petition and election when necessary	1224.8
petition, form and contents...	1224.9
purposes for which issued....	1224.1
qualification of voters at election	1224.12
redemption	1224.4
registration of bonds	1224.21
registration for election, closing of	1224.12
repealing clause	1224.34
exceptions	1224.34
resolution for bond issue....	1224.15
sale of bonds.....	1224.18
serial bonds defined.....	1224.3
signatures on bonds.....	1224.19
sinking fund, transfer of balance	1224.32
tax levy to pay.....	1224.25-1224.26
term of issue.....	1224.4
transfer balance of sinking fund	1224.32
where bonds are payable....	1224.19
who may vote at election....	1224.12
Bonds, funding, for floating indebtedness	
advertisement of sale.....	1254.23
emergency clause	1254.24
floating indebtedness, funding of	1254.17
funding bonds may issue, when	1254.19
interest and term.....	1254.21
registration	1254.21
resolution	1254.20
sale of bonds	1254.23
tax levy	1254.22
warrants may issue in excess of available funds, when....	1254.18
Bonds, funding, issuance on failure banks	
advertisement of.....	1254.6
disposal of money received from bank	1254.7
emergency clause	1254.8
interest	1254.4
may issue warrants, when....	1254.1
may issue funding bonds, when	1254.2
registry	1254.4
resolution	1254.3
tax levy to pay.....	1254.5
term of bonds.....	1254.4
Census, how taken and reported..	1051
compensation of clerk.....	1051
county superintendent to examine	1051.1
Coal lands, permits for leasing..	1805.46
Common school equalization board	1201.1
County high schools. See sub-title, High Schools	

SCHOOLS, PUBLIC (Continued)

County superintendent of schools	
apportionment school money by	964
census to be transmitted by...	971
offices, when to be kept open..	974
warrants drawn on basis apportionment	964
Districts not to be created or changed, when	1023
Districts, procedure to create...	1024
Dormitories, leases county lands for	1015.8
Eastern Montana state normal school	930.1-930.6
Endowment funds. See Funds:	
Sub-title, Endowment Funds	1015.1-1015.6
Examination of teachers	
academic and professional requirements	1094
classification of certificates...	1093
classes of certificates	1092
certificates of qualification required	1088
certificates established for purposes of articulation with other states	1104
classes of	1104
general prerequisites	1104
county board of educational examiners, powers	1090
duties and compensation...	1090
examinations held by.....	1091
grading of papers.....	1091
qualifications	1090
diplomas from other institutions recognized	1092
examinations, how conducted..	1091
fees for certificates.....	1092-1095
first grade certificates.....	1092
foreign certificates recognized, when	1104
classes of	1104
general prerequisites	1104
high school teachers, requirements	1103
higher grade certificate, how secured	1099
life certificates, how obtained..	1092
normal school training, when required	1102
papers, grading of.....	1091
permits	1092
professional certificates	1092
principals and high school teachers requirements....	1103
qualifications required of teachers	1088
recanvass of papers on appeal..	1096
renewals when granted.....	1098
revocation and suspension....	1097
second grade certificates.....	1092
special certificates, how obtained	1092
state board of educational examiners	1089
creation and powers.....	1089

INDEX.

[References are to Sections]

SCHOOLS, PUBLIC (Continued)

Examination of teachers (Continued)	
state certificates, how obtained.	1092
state teachers certificate fund.	1095
temporary certificates, how obtained	1092
university credits acknowledged	1100
university of Montana diplomas recognized	1092
validation of certain certificates	1093
validation of existing certificates	1101
Expenses member school board attending state association of schools, payment of.	443
Extra taxation, when and how authorized	1219
election on	1219
challenging voters—Oaths.	1223
Finance	
apportionment and distribution certain school moneys, how	1211
apportionment of moneys by superintendent of schools.	964
bonds. See sub-title, Bonds	
county clerk to report valuations	1215
warrants, how drawn	964
issued in anticipation revenues, when	964
Flag to be displayed.	1015
Funding bonds of county high schools issuance when.	1254.10-1254.16
Funding bonds, issuance on bank failure, when	1254.2-1254.8
Funding bonds, issuance for floating indebtedness.	1254.19-1254.24
Funds. See Funds: Sub-title, Endowment Funds	1015.1-1015.6
Gifts and donations, power to receive	5044.1
Gymnasiums, leases county lands for	1015.8
High schools	
accredited high schools to share taxes	1280
apportionment tax moneys.	1281A
appointment trustees by county commissioners	1267
city and county high school superintendent appointed when	1294
discontinuance, procedure for.	1301.1
election on	1301.2
disposal delinquent taxes.	1301.5
disposal of money	1301.9
payment bonds and warrants	1301.4
procedure for disposal property	1301.6
sale of property	1301.7-1301.8
unexpended money, disposal of	1301.3

SCHOOLS, PUBLIC (Continued)

High schools (Continued)	
bonds, funding, issuance on failure banks	
advertisement	1254.14
disposal moneys received from bank	1254.15
emergency clause	1254.16
funding bonds may issue when	1254.10
interest and term	1254.12
registration	1254.12
resolution	1254.11
sale of bonds.	1254.14
tax levy to pay.	1254.13
trustees may issue warrants when	1254.9
dormitory petty cash fund.	1271.2
dormitories, power to secure land for	1271.1
fees may be required when.	1282
free attendance	1282
gymnasium's authority to procure land for	1271.1
powers of trustees.	1271
proportion of tax levy, how computed	1282.2
applies to 1922 taxes and thereafter	1282.2
scope of act.	1281.1
segregation county and district high school money.	1280.1
special district high school tax.	1281
superintendent city and county high schools appointed when	1294
tax levy for support of.	1275
accredited county high schools to share.	1280
apportionment of money.	1281A
special district high school levy	1281
trustees, composition and term.	1266
county commissioners appointed	1267
officers, election and term.	1270
powers and duties.	1271
treasurer of board	1270
warrants drawn in advance allotment when	1280.1
Investment of school funds. See Department of State Lands and Investments.	1805.98-1805.105
Joint school districts	
county commissioners to fix tax levy	1036.2
copies of adjustment on change boundaries	1037.5
dissolution, proceedings for.	1037.1
disposal of property on dissolution	1037.3
indebtedness, how adjusted.	1037.4
school trustees, duties as to tax levy	1036.1
tax levies, how and when made	1036.1-1036.2
validation of existing districts	1037.2

INDEX.

[References are to Sections]

SCHOOLS, PUBLIC (Continued)

Legalization prior acts relative to dormitories	1015.7
Medical aid when furnished to children	1015
New districts, procedure to create	1024
Northern Montana Agricultural and Manual Training School	917-921.1
Outhouses, regulation of	1015
Permanent common school funds, how invested	1928A
application for loan	1930
conversion of existing mortgages	1928B
conversion of mortgages limit of loan	1932B
farm mortgages payable on amortization plan	1928A
mortgages, plan of, term and interest	1932A
Permits for leasing coal lands from state	1805.46
Powers of school boards	1015
Pupils, expulsion and suspension	1015
Reports of school trustees	1015
Rules, enforcement by trustees	1015
Rural school districts	
boundaries, how altered	1041
budget, preparation of	1044
definition of terms	1040
dissolution, procedure for	1048
election of trustees	1043
formation of, procedure	1041
meetings of board when held	1047
petition for transfer to	1041
powers and duties of trustees	1044
procedure to adopt county unit system	1042
election on	1042
redistricting when	1042
sinking fund third class district, disposal of	1045
salary schedule, establishment of	1044
salary of trustees	1047
school may be closed when	1044
tax levies, how made	1044
trustees, how and when appointed	1042
closing of school when	1044
compensation	1047
how appointed	1042
meetings, when held	1047
powers and duties	1044
preparation of budget by	1044
qualifications and election	1043
salary schedule establishment of	1044
tax levies, power to make	1044
unite for purpose of taxation	1041
warrants, how issued and countersigned	1044
Schoolhouses, purchase and sale	1015
School sites, easements on state land for	1805.57
charge for	1805.57

SCHOOLS, PUBLIC (Continued)

State common school equalization fund	1201.1
Superintendent of public instruction	
census duty to transmit	971
examination question, preparation by	944
offices when to be kept open	974
Taxation, extra, how authorized	1219
challenging voters	1223
election on	1219
oath of electors	1223
penalty for false swearing	1223
Taxes in joint school districts, levy of	1036.1
Teachers deemed re-elected when	1075
Teachers, employment and discharge	1015
Teachers' examinations. See subtitle, Examination of Teachers	
Teachers' retirement salary fund	
amount of monthly salary deductions	1116
disposal of	1116
amount of retirement salary	1125
clerk to make deductions, penalty	1116A
conditions for obtaining benefits of act	1117
county superintendent, duties in connection with act	1124
meetings teachers' retirement salary board	1121
additional help	1121
penalty for failure clerk to make deductions	1116A
retirement for bodily or mental infirmity	1126
retirement salary fund board, composition	1118
compensation	1118
expenses, how paid	1121
meetings, where held	1121
term	1118
vacancies	1112
school year, determination of	1127
superintendent public instruction, duties	1124
warrants, conditions of issuance	1124
who may obtain benefits of act	1117
persons entitled to and amount of salary	1125
retirement for bodily or mental infirmity	1126
Text-book commission	
contracts for text-books, procedure on letting	1190
estimate and levy of tax	1199
meetings when and where held	1189
notice of	1189

INDEX.

[References are to Sections]

SCHOOLS, PUBLIC (Continued)

Text-book commission (Continued)	
proposals for furnishing text-books	1190
publishers, requirements of....	1190
tax levy for free text-books..	1199
Third class school districts	
audit and examination books..	1019.1
report of examination.....	1019.1-1019.3
county commissioners to furnish books	1019.4
liability of officers for failure to keep books.....	1019.2
report of examination.....	1019.3
Time for creation or change districts	1023
Transportation of children, regulation of	1010
appeals to state board of education, when	1010.1
effect of act.....	1010.2
Trustees	
contract for transportation pupils when let.....	1010
duty of districts receiving children	1010
may send children to other districts when	1010
powers of generally.....	1015
transportation children, how and when.....	1010
appeals to state board education when.....	1010.1
effect of act.....	1010.2
Tuition, how determined.....	1015
Warrants, trustees may issue on failure of bank when.....	1254.1

SCHOOL TRUSTEES

See Schools, Public: Sub-title, Trustees

SEAL

County commissioner may adopt..	4465
Historical Society of Montana authorized	1560.13
design of	1560.14
State board of equalization.....	2122.17

SECOND-HAND DEALERS

Automobile license of.....	1763.14
----------------------------	---------

SECRETARY OF STATE

Certification names of nominees by	619
Certification and numbering initiative and referendum measures	103
how printed and distributed...	105
Duty to certify and post names primary election nominees...	648
Fees for filing articles foreign corporations	145.1
Nominating petitions to be filed with	618

SECRETARY OF STATE (Continued)

Reports of foreign corporations made to	145.2
Salary of deputy.....	440.2
Statement of foreign corporations to	145.3

SECURITY

For deposits city and county moneys	4767
For state deposits, how taken...	182

SEEDS

See Public Warehousemen..3592.1-3592.9

SERGEANT-AT-ARMS

Inventory legislative property by	78.1
May sell same, when and how...	78.2

SHERIFF

Duties of	4774
Duties as bounty inspectors....	3407.3
Federal prisoners, duty to receive	12472.1
payment for support.....	12472.2
Fees of	4916
Stolen and recovered cars, duty in connection with.....	1763.13

SINKING FUNDS

Cities and towns may invest, how	4622.1
Disposal of on creation rural school districts	1045
Duty of public officers to provide	463.1
county attorney to prosecute for failure	463.3
Penalty for misappropriation....	463.2

SKIMMED MILK

Regulation of sale.....	2628
-------------------------	------

SLASHING'S LIEN

Creation of	2778.7
-------------------	--------

SLEEPING-CAR COMPANIES

License tax. See Taxation.....	
.....	2313.1-2313.11

SLEIGHS

Regulation size of runners.....	1749.1
penalty	1749.2

SOCIAL CORPORATIONS

See Religious, Social and Benevolent Corporations.....6453-6455

SOLDIER BONUS ACT

Omitted from supplement.....	5654.1
------------------------------	--------

SOLDIERS AND SAILORS

See, also, Vocational Rehabilitation

INDEX.

[References are to Sections]

SOLDIERS AND SAILORS (Continued)		STATE BOARD OF EDUCATION	
Admitted to tuberculosis sanitarium	1520	Appointment and term.....	831
Preferential employment of on public works	5653	STATE CHEMIST	
exceptions	5653	Duty to make tests of gasoline..	3913.9
		assistant may make analyses.	3913.10
SOLDIERS' HOME		STATE COMMON SCHOOL FUND	
Board of managers, appointment	1529	Creation of.....	1201.1
Chaplain, duties and salary....	1546	STATE ENGINEER	
Wives and widows admitted to..	1536	Duty to make inspection of irrigation district works.....	7224
SPANISH AMERICAN WAR FUND		STATE EXAMINER	
Disposal of	1373.1	See Examiner, State	
Governor to remain trustee.....	1373.1	STATE EXAMINER'S FUND	
SPECIAL IMPROVEMENT DISTRICTS		Creation of.....	6014.73
In cities and towns. See Cities and Towns	5228-5276	STATE FAIR	
SPECIAL ROAD DISTRICTS		Earnings, how appropriated....	3645
See Road Districts.....	1652	revolving appropriation account	3645.1
SPEED AND TRAFFIC REGULATIONS		STATE FISH AND GAME FUND	
See Traffic Regulations.....	1743-1749.2	Creation and use.....	3670
SQUIRRELS		STATE FORESTS	
Extermination authorized, procedure	2561.1-2561.6	Damages for breach timber sales agreement	1830.6
STALLIONS		Designation certain state forests	1830.2
Running at large when prohibited	3400.1	Establishment of.....	1830.1
STANDARDS		Forester's co-operative work fund	1830.10
Gasoline	3913.6	Permits for cutting dead or inferior timber.....	1830.7
Kerosene	3913.7	Sale of timber, regulation of... purchaser to give bond.....	1830.4
STATE		Scaling regulations.....	1830.8
Contracts for buildings, how let	259.1-259.6	State forester appointment and duties	1830.3
Exempt from payment costs....	9810	authority to appoint help....	1830.3
Hail insurance. See Hail Insurance, State Board of....	350-363.1	bond	1830.3
Map	3847.1-3847.3	co-operation with land owners	1830.9
Officers, limitation expenses attending conventions.....	443	duties generally.....	1830.8
Number of jury challenges in criminal cases.....	11956	salary	1830.3
Property handling of. See Purchasing Department and Agent	293.1-293.13	State treasurer to receive money.	1830.10
Supplies. See Purchasing Department and Agent....	287-293.13	STATE HIGHWAY COMMISSION	
Warrants, preference right to purchase reserved.....	1912	Creation, salary and bond.....	1783
Warrants, treasurer may purchase general fund when...	1912	STATE HIGHWAY FUND	
STATE BANKING DEPARTMENT		How distributed.....	2396.16-2396.18
Creation of.....	6014.55	STATE INSTITUTIONS	
		Control educational institutions, where vested.....	841
		Insane asylum.....	1415
		STATE LANDS	
		See Department of State Lands and Investments....	1805.1-1805.123
		See, also, Oil and Gas Lands, State	1882.1-1882.24

INDEX.

[References are to Sections]

STATE OFFICERS

Athletic commission.....	4551
Board of land commissioners, composition	1805.3
Commissioner of agriculture. See Agriculture, Department of	
Commissioner of state lands....	1805.5
Education, state board of ap- pointment and term.....	831
Educational examiners, state board of creation and powers	1089
Entomologist, salary and ex- penses	916
Eugenics, state board of.....	1455.3
Expenses attending conventions, limitation on.....	443
Fish and game commission.....	3653
Fish and game warden.....	3656
Forester, appointment and duties	1830.3
powers	1805.6
Highway commission, creation salary and bond.....	1783
Land department. See Depart- ment of State Lands and In- vestments	1805.1-1805.123
Railroad commission. See Rail- road Commission	
State scale expert.....	3575.1
Superintendent of banks.....	6014.55
Superintendent of fisheries.....	3664
Superintendent and assistant superintendent insane asy- lum	1415

STATE PAROLE COMMISSIONER

Office abolished.....	12516.1
-----------------------	---------

STATE PRISON

Automobile tags to be manufac- tured at.....	12447.5
employees, how paid.....	12447.8
how selected.....	12447.9
installation of machinery.....	12447.6
machinery to be procured....	12447.5
plates to be manufactured where.....	12447.7
profits how disposed of.....	12447.11
report of registrar of motor vehicles	12447.10
Wearing apparel factory to be installed at.....	12447.1
disposal of clothes manufac- tured	12447.1
disposal of moneys.....	12447.2
skilled labor may be employed	12447.3
supervision of factory.....	12447.2
warden to execute contracts	12447.4

STATE SENATOR

Election on creation new county	4396.1
---------------------------------	--------

STATE TEXT-BOOK COMMISSION

See Schools, Public: Sub-title, Text-book Commission...	1189-1199
--	-----------

STATE TREASURER

See Treasurer, State	
----------------------	--

STATISTICS

Department of agriculture to compile concerning dairy in- dustry	3568
--	------

STATUTE OF LIMITATIONS

See Limitation or Actions	
---------------------------	--

STEAMBOATS

Inspection of. See Boats....	3859-3875
------------------------------	-----------

STEAM BOILERS

Inspection of, regulations.....	2726
---------------------------------	------

STENOGRAPHERS

Salary and expense allowance..	8933
Salary supreme court reporter..	440.1

STERILIZATION

See Eugenical Sterilization Law	1455.1-1455.8
--	---------------

STOCK

See, also, Livestock	
In banks. See Banks and Bank- ing	
In corporations. See Corpora- tions	

STONE

Leases of state lands for.....	1805.52-1805.55
---	-----------------

STREET-CARS

Traffic regulations on passing..	1743
----------------------------------	------

STUDENTS

Fares refunded to when.....	860
-----------------------------	-----

SUBPOENAS

Mileage allowed for service of..	4916
----------------------------------	------

SUMMONS

Form and publication in action to quiet title.....	9485
jurisdiction acquired by ser- vice	9487

SUPERINTENDENT OF BANKS

See Banks and Banking	
-----------------------	--

SUPERINTENDENT CITY AND COUNTY HIGH SCHOOLS

Appointed when	1294
----------------------	------

INDEX.

[References are to Sections]

SUPERINTENDENT OF FISH- ERIES

Appointment and powers..... 3664

SUPERINTENDENT OF PUB- LIC INSTRUCTION

Duties in connection with
teachers' retirement salary
act 1124
Examination questions, duty to
prepare 944

SUPPLIES

Purchase for state. See State
Purchasing Department and
Agent287-293.13

SUPREME COURT

Abbreviated record, how and
when presented 9746
Appeals taken to from what or-
ders and judgments..... 9732
Authentication of record, how.. 9746
Salary of stenographer..... 440.1
Transcripts, time for filing..... 9746

SUPREME COURT REPORTS

Advertisement for bids..... 381
Bond of publisher..... 383
Contract of publisher..... 381
Delivery by publisher..... 383
How published..... 380
Stock to be maintained..... 383

SURETY COMPANIES

Accepted on official bonds..... 6236
premiums, how paid 6236

SURVEYOR

See County Surveyor

TAXATION

Actions to annul tax titles, pro-
cedure 2214
Actions to recover tax paid un-
der protest..... 2269
Actions to recover federal taxes
authorized 2272.1
Apportionment on redemption
from tax sale..... 2211
Assessment-book, delivery to
treasurer 2161
Assessor, duties on collection
personal property taxes.... 2238-2239
duties concerning livestock... 2087.3
duty to give basis to county
clerk for taxation personal
property 2000.5
duty to give notice change of
assessments 2270
blanks and rolls, form of.... 2000.6
traveling expenses, payment
of 2038

TAXATION (Continued)

Assessment of property for taxa-
tion by state board of
equalization. See sub-title,
Equalization, State Board
of
correction or change of assess-
ment, procedure..... 2122.23
railroads, duty to render state-
ment 2131
valuation of real estate and
improvements 2002.1
Assignment of county tax cer-
tificates 2191
Banks, defunct not to be taxed.. 6014.95
Banks, how taxed..... 2067
Bounty fund levy, petition for.. 2083
Bounty fund tax levy..... 2081-3407.10
time of payment..... 2082
Bounty inspectors..... 2083
Building and loan associations. 6355.20
Cement dealers and producers'
license tax..... 2357-2368
Change in assessments, notice to
be given..... 2270
Cities and towns
amount of levy for municipal
purposes 5194
annual tax levy..... 5216
certification delinquent special
improvement taxes..... 5215.1
in cities which have exceeded
constitutional limit of in-
debtedness 5201
Classification law
blanks and rolls of assessor,
form of..... 2000.6
board of equalization to fix.. 2000.4
county clerk to apply percent-
ages 2000.5
percentage basis, how deter-
mined 2000.2
taxpayer may appeal..... 2000.3
Collection personal property
taxes 2238-2239
Contests before board of equali-
zation, procedure..... 2270
Correction or change of assess-
ment, procedure for..... 2122.23
Corporation license tax: See sub-
title, License Tax on Cor-
porations 2299-2303.1
County board of equalization,
powers 2114
County clerk
delivers assessment-book to
treasurer 2161
affidavit to accompany..... 2161
duty to charge treasurer with
taxes 2163
duty to charge and credit
collectors 2165
duty to transmit statement to
state board of equaliza-
tion 2181
duty to enter assessment net
proceeds tax..... 2122.22

INDEX.

[References are to Sections]

TAXATION (Continued)

County clerk (Continued)	
poll tax receipts duty to pre-	
pare	2165.1
report to state auditor.....	2257
County commissioners may sell	
unredeemed tax property	
when and how.....	2235
County fairs, levy for.....	4549
Date when taxes are payable..	2169.1
Deeds for delinquent tax titles	
actions to annul.....	2214
cities and counties may pro-	
cure	2209.1
of what deed is evidence.....	2214
property in irrigation districts	
.....	7248.3-7248.7
title conveyed by.....	2215
validation certain tax titles..	2209.2
Delinquent tax notice, publica-	
tion of.....	2169
Delinquent taxes, interest on..	2169.1
charged to county treasurer..	2180
Drainage district taxes, collec-	
tion of.....	2172.1
Equalization, county board,	
powers of.....	2114
Equalization, state board of	
appeals to from county board.	2122.9
appeals to district court from	
decisions of.....	2122.14
assessment, powers concerning	2122.8
assessment net proceeds tax	
on royalty interests.....	2096.2
clerk's power to employ.....	2122.5
collection of information by..	2122.8
composition and term.....	2122.1
definition of terms.....	2122.4
duty as to freight line com-	
pany taxes.....	2105
duty as to net proceeds mines	
tax	2090-2096.2
assessment and apportion-	
ment by.....	2122.20-2122.21
duty to collect certain taxes.	2122.19
duty of public officers to as-	
sist	2122.15
effect partial invalidity act..	2122.18
equalization property values	
by	2122.8
enumeration of taxes collected	
by	2122.19
former board, continuation of.	2122.7
investigations to be conducted	
by	2122.8
license taxes collected by....	2122.19
meetings	2122.3
notice of intention to change	
assessments	2122.10
oaths, power to administer..	2122.16
office expenses.....	2122.6
omitted property, assessment	
by	2122.11
organization	2122.3
penalty for contempt of.....	2122.16
penalty for refusal to furnish	
information to.....	2122.14

TAXATION (Continued)

Equalization (Continued)	
percentage basis for taxation	
fixed by.....	2000.4
powers and duties generally..	2122.8
qualifications of members.....	2122.2
quorum	2122.3
railroads, assessment by.....	2131
duty to render statement..	2131
railroads, duty to assess.....	2122.8
reports	2122.8
salaries	2122.2
seal	2122.7
secretary, duties.....	2122.5
statement of changes sent to	
county clerk.....	2122.12
state rate of tax fixed by....	2122.13
telegraph and power lines, as-	
sessed by.....	2122.8
notice	2122.13
vacancies in board how filled.	2122.1
witnesses, power to summon..	2122.8
Exemption members national	
guard from poll tax.....	1401
Extra levy for schools when au-	
thorized	1219
election on.....	1219
Federal taxes	
action to recover authorized..	2272.1
claims, payment of.....	2272.6
congressional legislation to be	
sought	2272.2
employment of counsel.....	2272.4
escheat of funds.....	2272.7
moneys, disposal of.....	2272.3
notice to claimants.....	2272.5
Federal tax liens	
act, how cited.....	2154.7
certificate of discharge.....	2154.3
filing notice of.....	2154.1
furnishing of files.....	2154.4
index of.....	2154.2
interpretation of act.....	2154.6
purpose of act.....	2154.5
Fire department disability fund,	
levy for.....	5119
Free text-books, levy for.....	1199
Freight line companies to file	
statement	2099
certification value for taxa-	
tion	2105
gross earnings, ascertainment	
and tax on.....	2101
statement gross earnings and	
tax to be made by com-	
panies	2103
Gasoline distributors' and dealers'	
license tax. See sub-title,	
License Tax on Gasoline	
Distributors and Dealers...	
.....	2382-2396.20
Grazing livestock, tax on.....	
.....	2087.1-2087.5
Gypsum, license tax on sales of	2368
Hail insurance levy, how made..	351
High school funding bonds, levy	
for	1254.13

INDEX.

[References are to Sections]

TAXATION (Continued)

Horses taken in roundup, assessment of.....	4520.9
Huckster's license.....	2421.9-2421.15
Improvements, effect of destruction on property values.....	2002.2
Inheritance taxes. See Inheritance Tax.....	10377.1-10377.25
Insect pest extermination, levy for	4504
Registry of warrants.....	4504
Interest purchasers of state lands	1805.92
Irrigation districts. See Irrigation Districts.....	7234-7264
Irrigation district bonds, levy to pay	3973-3974
Itinerant vendors, license of.....	2421.16-2421.23
Joint school district levies.....	1036.1
Levy for municipal purposes, amount of.....	5194
Levy to pay county bonds....	4622
License of transient merchants, hucksters and peddlers	
hucksters' license	
amount of license.....	2421.10
application for.....	2421.11
definition of huckster.....	2421.9
interpretation of law.....	2421.15
issuance of license.....	2421.12
penalty for doing business without	2421.14
penalty for failure to exhibit	2421.13
itinerant vendors' license	
amount of license.....	2421.17
application for.....	2421.18
bond, when required.....	2421.19
definition of itinerant vendor	2421.16
interpretation of act.....	2421.23
issuance of license.....	2421.20
penalty for doing business without	2421.22
penalty for failure to exhibit	2421.21
transient merchants' license	
amount of license.....	2421.2
application for license.....	2421.3
bond in lieu of license when	2421.4
definition of transient retail merchant	2421.1
interpretation of act.....	2421.8
issuance of license.....	2421.5
licenses not transferable....	2421.5
penalty for doing business without	2421.7
penalty for failure to exhibit	2421.6
License tax on cement dealers and producers	
amount of tax.....	2357
tax on sale of cement.....	2368
License tax on corporations	
assessments, how made.....	2300
disclosures, how compelled....	2303

TAXATION (Continued)

License tax on corporations	
(Continued)	
filing of returns.....	2302
how computed.....	2299
penalty for nonpayment.....	2300
procedure on understatement..	2303
repeal, effect of.....	2303.1
returns to be made.....	2299
License tax on gasoline distributors and dealers, initiative act of 1927	
action to collect authorized..	2389
amount of tax.....	2382-2383
dealer's tax, amount of.....	2383
distributor's tax, amount of..	2382
federal aid roads, proceeds used on	2392
penalty for failure to make statement	2389
proceeds, how distributed....	2392
quarterly payment of.....	2384
License tax on gasoline distributors and dealers, legislative measure of 1927	
action to enforce authorized.	2396.8
amount of tax.....	2396.3
dealer's invoices	2396.10
dealer's license tax, amount of	2396.2
dealer's statements.....	2396.3
dealers to keep records.....	2396.6
penalty	2396.7
definition terms.....	2396.1
disposal of moneys.....	2396.13
effect partial invalidity act..	2396.14
export gasoline excepted....	2396.11
federal aid highways, proceeds used on.....	2396.13
inspection of dealer's records	2396.9
penalty for delinquency.....	2396.5
penalty for false representations	2396.20
procedure to fix tax in absence statements.....	2396.8
railroad companies to make reports	2396.12
refund certain gasoline tax authorized	2396.19
rules to be prescribed by board equalization	2396.4
state highway fund, how distributed	2396.16-2396.18
violation of act misdemeanor.	2396.15
License tax on metalliferous mines	
amount of tax.....	2344.4
commencement of business, duty to notify board....	2344.13
computation of tax.....	2344.6
disposal of proceeds..	2344.12-2344.16
effect partial invalidity act..	2344.16
gross value of product, how determined	2344.3
how computed for 1925.....	2344.15
imposition of tax.....	2344.2
lien of tax.....	2344.11

INDEX.

[References are to Sections]

TAXATION (Continued)

License tax on metalliferous mines (Continued)	
notice of tax.....	2344.4
penalties added when collection enforced.....	2344.9
penalty for delinquency.....	2344.7
"person" defined.....	2344.1
production of evidence, how compelled	2344.9
repealing clause.....	2344.17
rehearing may be had when.....	2344.10
statement to be made by operators	2344.5
penalty for failure to make tax supplementary to existing taxes	2344.14
License tax on oil producers	
amount of tax.....	2398
distribution of tax moneys....	2399
gross value of product, how determined	2400
payment of tax, when due....	2399
procedure to collect tax in absence of statement.....	2405
producers to file reports.....	2401
quarterly statement of product required	2403
record of producers to be kept	2402
penalty	2402
unlawful to fail to make statement	2404
who must pay.....	2398
License tax on sleeping-car companies	
amount and levy of tax.....	2313.6
assessment of tax.....	2313.3
collection, how enforced.....	2313.7
definitions	2313.1
estoppel of company when....	2313.8
first tax due when.....	2313.9
notice of hearing.....	2313.5
penalty for failure to report	2313.7
receipt to constitute license..	2313.10
repeals, exception.....	2313.11
reports to be made.....	2313.2
valuation, how determined..	2313.4
Lien of federal taxes, filing and indexing	2154.1-2154.7
Lien of personal property taxes	2153
Livestock, tax on when coming into state to graze.....	2087.1
assessor to ascertain stock liable to tax.....	2087.3
disposal of tax.....	2087.5
owner to notify county treasurer	2087.2
penalty for violation act....	2087.4
Merchants, transient, license of	2421.1-2421.8
Mines, net proceeds, tax on apportionment tax by board equalization	2122.20
transmission statement to county clerk	2122.21
clerk to enter assessment..	2122.22

TAXATION (Continued)

Mines (Continued)	
assessment by board equalization	2096.2
how computed.....	2090
levy and collection of tax.....	2095-2122.22
penalty for false statements..	2090
royalty owners to make statement	2096.1
statement gross yield.....	2089
Net proceeds tax on mines. See sub-title, Mines.....	2089-2096.1
Notice of change in assessment to be given.....	2270
procedure to contest.....	2270
Notice of claim of tax title, publication of.....	2215
Notice of delinquent taxes, publication of.....	2169
Notice of federal tax liens filing of.....	2154.1
index of.....	2154.2
Notice of tax sales, publication of	2182
Oil producer's license tax. See sub-title, License Tax on Oil Producers.....	2398-2405
Omitted property assessed by state board of equalization..	2122.11
Payment of taxes, when due....	2169.1
Payment taxes under protest....	2269
Peddlers, license of....	2421.16-2421.23
Percentage basis, how determined	2000.2
taxpayers may appeal.....	2000.3
Personal property tax, collection of by assessor.....	2238, 2239
Personal property tax, lien of..	2153
mortgagee may require separate assessment.....	2153
Poll tax receipts, preparation of	2165.1
Power lines, assessment by board equalization	2122.8
Protest, payment taxes under..	2269
action to recover.....	2269
Publication notice delinquent tax sales	2182
Quarterly settlement by county treasurer	2174
approval of.....	2174
Railroads, assessment of...2122.8-2131	
officers to render statement..	2131
Real estate and improvements, valuation of.....	2002.1
Receipts for poll tax, preparation	2165.1
Redemption from tax sales by whom made.....	2211
Refund of money for void tax title when.....	2197.1
Refund gasoline tax authorized when	2396.19
Remission 1922 tax delinquencies	2200.1
penalties remitted.....	2200.3

INDEX.

[References are to Sections]

TAXATION (Continued)

Remission 1922 tax delinquencies (Continued)	
publication notice postpone- ment	2200.2
Report by county treasurer to county clerk	2176
Report by county clerk to state auditor	2257
Sale of unredeemed property by county commissioners when authorized	2235
proviso	2235.1
Sales for delinquent taxes	
designation of portion to be sold	2191
publication of notice of sale	2182
redemption from sale.....	2211
sold to county when.....	2191
assignment of county's in- terest	2191
validation existing certificates	2191
School bonds, levy to pay.....	1224.26
School district floating indebted- ness, levy for.....	1254.22
School district, special funding bonds, levy for.....	1254.5
Settlement county treasurer with state treasurer.....	2255
Sleeping-car company's license tax. See sub-title, License	
Tax on Sleeping-car Com- panies	2313.1-2313.11
Special district high school tax	1281
State highway funds, how dis- tributed	2396.16-2396.18
how expended.....	2396.17
percentages uncompleted mile- age fixed.....	2396.18
Taxable value, how ascertained	2000.1
Tax deeds. See sub-title, Deeds for Delinquent Tax Titles	
Telegraph and telephone lines, assessment by state board of equalization.....	2122.8
Title conveyed by tax deed....	2215
Transient retail merchants' li- censes	2421.1-2421.8
Traveling expenses assessors and deputies	2038
Treasurer to be charged with taxes	2163
to note date and amount of payment	2171
to publish delinquent tax no- tices	2169
to collect irrigation and drain- age district taxes.....	2172.1
to be charged with delinquent taxes	2180
to publish notices of tax sales	2182
to make quarterly settlement.	2174
to make report to county clerk	2176
to make settlement with state treasurer	2255
Validation certain tax deeds....	2209.2

TAXATION (Continued)

Validation existing tax sale cer- tificates	2191
Value, how ascertained.....	2000.1
Valuation real estate and im- provements	2002.1
effect destruction improve- ments	2002.2
Void tax titles, refund of money when	2197.1
Witnesses, state board of equal- ization may summon.....	2122.8

TAXIDERMISTS

License of.....	3751
-----------------	------

TAX DEEDS

See Taxation.....	2209.1-2235
-------------------	-------------

TEACHERS

Examination of. See Schools, Public: Sub-title, Examina- tion of Teachers.....	1088-1104
School teachers deemed re-elected	1075

TEACHERS' RETIREMENT FUND

See Schools, Public: Sub-title, Teachers' Retirement Salary Fund	1116-1127
--	-----------

TELEGRAPH AND TELEPHONE COMPANIES

Assessment of property.....	2122.8
-----------------------------	--------

TEXT-BOOKS

In public schools. See Schools, Public: Sub-title, Text-Book Commission	1189-1199
---	-----------

THIRD CLASS SCHOOL DISTRICTS

See Schools, Public: Sub-title, Third Class School Districts.	
--	--

THRESHERMEN'S LIENS

Costs allowed on foreclosure of	9799.1
Limitation time for action to foreclose	8370

TIMBER

See State Forests.....	1830.1-1830.10
State timber lands not subject to sale.....	1805.64

TITLE

Certificate of title to automo- biles. See Motor Vehicles: Sub-title, Certificates of Title	1763.1-1763.4
--	---------------

TITLE ABSTRACTORS

Renewal of bond, regulation of	4143
--------------------------------	------

INDEX.

[References are to Sections]

TITLE RESERVATION CON-TRACTS

Filing of..... 7594

TRACTION ENGINES

Inspection of, regulation..... 2726

TRADEMARKS

Registration by dealers in dairy products 2629

TRAFFIC REGULATIONS

Accidents, drivers of automobiles to report 1744.1

County commissioners may promulgate 1622

Heavy machinery, moving on roads 1749

Passing vehicles, duty to permit.. 1743

Penalty for failure to report accidents 1744.1

Rules of the road..... 1743

Signals, how given..... 1743

Standing street-cars, regulation on passing 1743

Trucks liable for breakage, when 1749

Vehicles to proceed how..... 1743

TRANSCRIPT

Time for filing in supreme court. 9746

TRANSIENT RETAIL MERCHANTS

License of. See Taxation..2421.1-2421.8

TRANSPORTATION COMPANIES

Regulation of. See Railroad Commission: Sub-title, Motor Transportation Companies... 3858.1-3858.11

TRAPPERS

License for 3685

TRAVELING EXPENSES

County assessor, payment of.... 2038

Limitation state officers attending conventions, etc..... 443

State entomologist, how paid.... 916

State officers to file itemized account. See Examiners, State Board of: Sub-title, Expense Accounts458.1-458.6

TREASURER, COUNTY

Duties as to taxation. See Taxation

Duties in connection with payment school bonds1224.29

Duty to keep record school bond funds1224.28

List of delinquent motor vehicle taxes, duty to make..... 1759.2

May purchase county warrants when and how..... 4639.6

TREASURER, COUNTY (Continued)

Receipts, duty to issue in triplicate 4751

Public funds, regulation of deposit 4767

TREASURER, STATE

See, also, Funds

See, also, Warrants

Advertisement for bids to publish report 187.2

Balance sheet to be prepared by 187.1

Custodian funds historical society 1560.3

Contract for publishing report.. 187.3

Deposits state funds, how made.. 182

Duty to keep securities and records

investments by land board..1805.105

Duties in connection with hail insurance 355

Duty to keep account of funds.. 187.1

Duties in connection with fiscal agencies 198.13

Forester's co-operative work fund established by1830.10

Governor to verify report of.... 187.1

Interest on state warrants..... 180

Payment warrants on fire department relief association.. 5128

Purchasing agent to let contract for publishing report.. 187.3

Registry of state warrants..... 180

Reports to commissioner of state lands 1805.9

Salary of deputy..... 440.3

Security for state deposits taken by 182

What controlling fund accounts to be kept by..... 198.1

TREASURY NOTES, ACT OF 1925

Appropriation for 5623.8

Disposal of 5623.4

Form and registry..... 5623.3

Issuance authorized..... 5623.1

Place of payment..... 5623.7

Series and interest..... 5623.2

Treasury note redemption fund.. 5623.6

Where and how payable..... 5623.5

TRESPASS

On state lands, penalty for..... 1904

TRUCKS

Regulation of moving on highway 1749

TRUST COMPANIES

See Banks and Banking

TRUST DEEDS

How executed by corporations and where filed..... 8273

INDEX.

[References are to Sections]

TRUST ESTATES

Appearance unknown persons....	9575.8
Bond to be given by trustee....	9575.7
Court may authorize sale or lease of when	9575.1
Effect of final order.....	9575.8-9575.9
Hearing, order and confirmation..	9575.7
Mineral leases, when authorized..	9575.3
Notice to minors and persons of unsound mind	9575.6
Order of court, term of lease...	9575.2
Procedure on petition to court for order	9575.4
hearing	9575.4
notice of hearing, publication..	9575.5
Responsibility of persons dealing with trustee	9575.10

TRUSTEES

Rural schools, powers and duties.	1044
qualification and election....	1043
Schools. See Schools, Public:	
Sub-title, Trustees	

TRUSTS

See Conspiracy	10904
----------------------	-------

TUBERCULOSIS SANITARIUM

Admission of patients, regulation of	1520
Cost of treatment of indigents..	1520
Soldiers and sailors admitted when	1520

UNIFORM NEGOTIABLE INSTRUMENTS LAW

See Negotiable Instruments Law

UNIT SYSTEM FOR RURAL SCHOOLS

Procedure for adoption.....	1042
-----------------------------	------

UNIVERSITY OF MONTANA

Credits acknowledged by board educational examiners	1100
Diplomas granted by.....	854
Institutions comprising	852
Refunding fare to students.....	860

VALIDATION

Certain county bond issues....	540.3
Certain judicial sales of real property	9453
Certain tax deeds.....	2209.2
Existing tax sale certificates....	2191

VALUE

Taxable value, how ascertained..	2000.1
----------------------------------	--------

VEGETABLES

How purchased for state institu- tions	293.9
---	-------

VETERANS

Memorial fund	4559
---------------------	------

VEHICLES

See Traffic Regulations

VOCATIONAL REHABILITATION

Amount of monthly allowance..	3051.1
Conditions of allowance.....	3051.1
Payments, how made.....	3051.3
Who entitled to allowance.....	3051.2

VOTERS

See, also, Elections	
Qualifications on elections for creation public indebtedness.	540.1
preparation and posting lists voters	540.2
Qualifications on school district bond elections	1224.12

WARDEN

Game warden. See Fish and
Game Laws

WARDEN STATE PRISON

Registrar motor vehicles.....	1755
duties as such. See Motor Vehicles: Sub-title, Regis- tration	1755-1763.21

WAREHOUSEMEN

See Public Warehousemen

WARRANTS

Counties may purchase county warrants, when	4639.6
County clerk to draw when....	4811
County high school trustees may issue on failure of bank when	1254.9-1254.16
Investment special funds in gen- eral fund warrants author- ized	270
Preference right to purchase re- served by state	1912
Registration hail insurance war- rants	355
state warrants	180
Salary county clerk withheld when	4814.1
School trustees may issue for moneys in failed banks when	1254.1-1254.8
School trustees may issue in ex- cess of available funds when	1254.18
School warrants when issued in anticipation of collections..	964
State warrants, when registered..	180
Treasurer may purchase state general fund warrants when.	1912
Validation certain poor fund war- rants	230.1

WAR RELICS

See Grand Army of Republic...320-324

WATER AND WATER RIGHTS

Cities may furnish water to out- side industries	5039.2
Decrees subject to prior adjudi- cations	7122
petition to establish rights after decree	7124A

INDEX.

[References are to Sections]

WATER AND WATER RIGHTS

(Continued)

Lessees of state lands may acquire water right	1805.33
Water commissioners appointed when	7136
compensation and apportionment	7159
complaint by dissatisfied users, procedure	7150
execution may issue on apportionment order	7159
execution to issue on order fixing fees	7149
expenses, how allowed and fixed	7145
apportionment of	7147
notice to be given by clerk..	7147
order of court, hearing and determination	7148
fees of	7136
headgates to be maintained....	7151
notification by commissioners	7151
power to admeasure water....	7140
taxation of costs	7159

WATER COMMISSIONERS

See Water and Water Rights....	7136-7159
--------------------------------	-----------

WEARING APPAREL

Factory for manufacture of to be installed at state prison....	12447.1-12447.11
--	------------------

WEEDS

Extermination by county commissioners. See County Commissioners	4508-4512
Noxious weeds in crops, procedure on finding	4512

WEIGHTS AND MEASURES

See, also, Scales	
Full weight of coal to be given..	3546.3
Standard for dairy products enumerated	3571

WIDOWS' PENSIONS

Allowance, when and to whom made	10482
how procured	10482

WILD ANIMALS

Bounties for killing. See Bounties	3407.1-3407.11
Destruction by livestock commission	3417.2

WILLS

Probate of, when granted.....	10030
proof of subscribing witnesses, how produced	10030

WITNESSES

May demand advance of fees when	4944
---------------------------------------	------

WITNESSES (Continued)

State board of equalization may summon, when.....	10377.25
Tax commission may summon....	2122.8
Who cannot be examined as....	10536

WOLVES

Bounty on	3407.1
-----------------	--------

WOOL

May be included with mortgaged sheep	8290.1
--	--------

WORKMEN'S COMPENSATION ACT

Beneficiary defined	2865
Compensation for various disabilities, amount of.....	2912-2915
Compensation for certain enumerated injuries	2920
Compensation paid to parent or guardian, when	2898
Compensation to run consecutively, when	2919
Death, compensation for injury causing	2915
additional compensation, when allowed	2916
Defenses not excluded in certain occupations	2837
Employer defined	2862-2863
Employers may elect plan, when..	2990A
Hospital service to be furnished..	2917
Injuries for which compensation is allowed	2920
Limitation of time, exceptions in case of minors	2900
appointment of guardians....	2900
Major dependent defined.....	2866
Medical service to be furnished..	2917
Minor dependent defined.....	2867
Operation includes what.....	2849
Temporary total disability, compensation for	2912
Total permanent disability, compensation for	2913
Workman defined.....	2863
exception	2863

WRESTLING

See Athletic Commission....	4551-4562½
-----------------------------	------------

WRIT OF MANDATE

Peremptory mandate to be awarded when	9858
damages and costs	9858

YEAR

Fiscal year, cities and towns....	5217
Fiscal year in consolidated cities and counties	5520.54

YELLOWSTONE COUNTY

Establishment line with Carbon county	4358.1-4358.2
---	---------------

YELLOWSTONE RIVER

Regulation fishing in.....	3694
----------------------------	------

State Law Library Of Montana

KFM9030 1921 .A2 Supp

1927 supplement to the Revised codes of

c. 1



3 0000 00064 1971

MONTANA
STATE LAW LIBRARY.